IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MOHAMMAD SHEKIB ESAHAQZADA,

Petitioner,

v. Case No. 25-3250-JWL

CRYSTAL CARTER, SYDNEY MILUM, TODD LYONS, KRISTI NOEM, and PAM BONDI,

Respondents.

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the *pro se* petition of Mohammad Shekib Esahaqzada ("Petitioner") for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, an "arriving" and unadmitted alien subject to removal under 8 U.S.C. § 1225(b)(1), asserts he should be released from custody because (1) there is no significant likelihood of removal in the reasonably foreseeable future under 8 U.S.C. § 1231(a)(6) and *Zadvydas v. Davis*, 533 U.S. 678 (2001); (2) his custody otherwise is indefinite under cases such as *Jennings v. Rodriguez*, 583 U.S. 281 (2018); and (3) he has been denied due process because he has not received post-order custody reviews ("POCRs") prescribed by regulations. ECF 1 at 1-3.

This is the second request for habeas relief submitted by Petitioner. In July 2025, he filed his first habeas petition. The Court construed the initial petition as asserting a claim under *Zadvydas* and related due process principles. *Esahaqzada v. U.S. Immigration & Customs Enf't*, No. 25-3145-JWL, 2025 WL 2933890, at *1 & n.2 (D. Kan. Sept. 5, 2025). The Court denied the first petition because (1) Petitioner was deemed to be an applicant for admission under 8 U.S.C. § 1225(b)(1) and thus had no due process rights "beyond those that Congress provided by statute;" (2) § 1225(b)(1) provides that an alien in Petitioner's situation "shall be detained . . . until

removed;" and (3) the Supreme Court in *Jennings* "made clear that the *Zadvydas* construction does not apply to detention under Section 1225(b), which, unlike Section 1231(a)(6), sets a defined period for detention with mandatory language." *Id.* at *1-2.

Petitioner's latest request for habeas relief should be denied as well. First, because Petitioner is subject to removal procedures under 8 U.S.C. § 1225(b)(1), he continues to be detained "until removed." This statutory provision also defeats his *Zadvydas* claims, which arise under § 1231(a)(6) instead of § 1225(b)(1). Even though *Zadvydas* has no application here, Respondents have been and will continue to be diligent in seeking Petitioner's removal. Second, as an "arriving" and unadmitted alien under § 1225(b)(1), Petitioner is not entitled to POCRs as contemplated in regulations such as 8 C.F.R. §§ 241.4 and 241.13. Rather, because he was detained shortly after arriving at the border, his rights are limited to those Congress has provided by statute.

STATEMENT OF FACTS

The following facts are part of the Declaration of Sydney Milum, a Deportation Officer for Enforcement and Removal Operations at Immigration and Customs Enforcement ("ICE") of the United States Department of Homeland Security ("DHS"). Exhibit ("Ex.") 1, Milum Declaration ¶¶ 1-3. Some facts alleged in Petitioner's first and second habeas petitions are included as well. CM/ECF documents connected to Petitioner's first habeas petition are cited as "*Esahaqzada I.*"

Petitioner is a native and citizen of Afghanistan. Ex. 1 ¶ 4; *see also* ECF 1 at 1; *Esahaqzada I*, ECF 1-1 at 2. On September 10, 2024, Customs and Border Protection ("CBP") encountered and arrested Petitioner at or near Tecate, California after he entered the United States without being admitted or paroled. Ex. 1 ¶ 5; *see also* ECF 1 at 1; *Esahaqzada I*, ECF 1 at 4; *Esahaqzada I*, ECF 1-1 at 2. On the same day, CBP processed Petitioner for expedited removal pursuant to section 235(b)(1) of the Immigration and Nationality Act. Ex. 1 ¶ 6 (citing 8 U.S.C. § 1225(b)(1)).

On October 16, 2024, an officer from U.S. Citizenship and Immigration Services ("USCIS") interviewed Petitioner to assess whether Petitioner could meet the minimal threshold to pursue an application for relief from removal. *Id.* ¶ 7. According to Petitioner, he alleged he should be granted asylum because he had a credible fear of persecution. *Esahaqzada I*, ECF 1-2 at 1-3. On October 23, 2024, USCIS concluded Petitioner did not meet the standard for the relief he sought and referred the matter to an Immigration Judge for review. Ex. 1 ¶ 8. On November 5, 2024, the Immigration Judge reviewed the findings made by USCIS, upheld USCIS's determination, and returned the matter to DHS to effectuate Petitioner's removal. *Id.* ¶ 9. Among other things, the Immigration Judge stated:

> On 11/05/24, a review of the Department of Homeland Security's (DHS's) negative credible fear determination was held in this matter. . . . IT IS HEREBY ORDERED THAT: The DHS credible fear determination is AFFIRMED, and the case is returned to DHS for removal of the Applicant. . . . This is a final order. There is no appeal from this decision.

Esahaqzada I, ECF 1-2 at 1, 3 (citation modified).

DHS previously attempted to remove Petitioner to Afghanistan without success. Ex. 1 ¶ 10. Although DHS submitted a travel document to Afghanistan, Afghanistan declined to accept Petitioner in April 2025. *Id.* In October 2025, however, DHS was informed there is a substantial likelihood of removal in the reasonably foreseeable future ("SLRRFF") to Afghanistan. *Id.* ¶ 15. DHS thus resubmitted a travel document request to Afghanistan for Petitioner. *Id.* ¶ 16. This request remains pending. *Id.*

In April 2025, DHS also submitted Form I-241, Acceptance of Alien, to Saudi Arabia, Turkmenistan, and Pakistan. *Id.* ¶ 11. As of today, those countries have not responded to DHS's requests. *Id.* When DHS served Petitioner with third country notice in June 2025, Petitioner refused and requested removal to Canada, Australia, or the United Kingdom. *Id.* ¶ 12; *see also* ECF 1 at 1

(alleging that ICE has attempted to remove Petitioner to these three countries); *Esahaqzada I*, ECF 1-1 at 7 (similar). DHS subsequently submitted Form I-241 to these countries. Ex. 1 ¶ 13. In July 2025, Canada declined to accept Petitioner. *Id.* As of today, Australia and the United Kingdom have not responded to DHS's requests. *Id.* DHS will continue its efforts to remove Petitioner to a third country, and to identify other countries to which he can be removed. *Id.* ¶ 17.

ARGUMENT

28 U.S.C. § 2241(a) vests each district court with the power to grant a writ of habeas corpus. Such a writ "shall not extend to a prisoner" unless "[h]e is in custody in violation of the Constitution or laws or treaties of the United States[.]" 28 U.S.C. § 2241(c)(3). The Court of Appeals reviews legal issues in connection with a § 2241 habeas petition *de novo*, while factual findings are reviewed for clear error. *Palma-Salazar v. Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012).

I. Because Petitioner was processed under 8 U.S.C. § 1225(b), he must be detained "until removed" and is not entitled to relief under *Zadvydas*

The removal procedures in 8 U.S.C. § 1225(b)(1) apply to "aliens arriving in the United States and certain other aliens who have not been admitted or paroled." After providing for an asylum interview in which an alien can attempt to establish a credible fear of persecution if removed to a particular country, *see id.* §§ 1225(b)(1)(A)(i)-(iii) & (b)(1)(B)(i)-(ii), the statute makes detention mandatory and specifies the process that is due to the alien:

> *(iii) Removal without further review if no credible fear of persecution*
>
> (I) In general
>
> Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.
>
> (II) Record of determination

> The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.
>
> (III) Review of determination
>
> The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).
>
> *(IV) Mandatory detention*
>
> *Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.*

Id. § 1225(b)(1)(B)(iii)(I)-(IV) (citation modified); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109-10 (2020) (confirming that an alien "can avoid expedited removal by claiming asylum," which often involves a determination whether the alien has a "credible fear of persecution," and if reviewing officers find "the applicant does not have a credible fear," the alien "may appeal to an immigration judge, who can take further evidence and shall make a de novo determination") (citation modified).

Petitioner went through this process. He attempted to enter the United States at the California border without being admitted or paroled. *See supra* Statement of Facts ("SOF"). He claimed asylum by asserting a credible fear of persecution. *Id.* USCIS made a negative credible fear determination and rejected his request for relief. *Id.* An Immigration Judge affirmed USCIS's decision. *Id.* Petitioner is being detained while ICE seeks to execute his order of removal. *Id.* ICE

has attempted to remove Petitioner to Afghanistan and elsewhere and continues to investigate these and other countries. *Id.*

As the Court recognized in connection with Petitioner's first request for habeas relief, the application of 8 U.S.C. § 1225(b)(1) means "petitioner's detention until eventual removal is mandatory." *Esahaqzada*, 2025 WL 2933890, at *2. Other cases support the Court's conclusion. *See, e.g., Alcazar v. Cantu*, No. CV-24-03342-PHX-JAT, 2025 WL 2304357, at *1-2 (D. Ariz. Aug. 11, 2025) (stating, in a case with a negative credible fear finding, that "based on the plain language of the statute, Petitioner shall be detained until removed") (citation modified); *Amaglobeli v. Mayorkas*, No. 1:23-CV-00135, 2023 WL 4678428, at *1-2 (W.D. La. June 30, 2023) ("Since Amaglobeli failed to make a credible fear showing, his detention is mandatory.").

8 U.S.C. § 1225(b)(1) displaces the application of *Zadvydas*. Ordinarily, if an alien is not removed during a 90-day period, § 1231(a)(6) "authorizes further detention." *Zadvydas*, 533 U.S. at 682. The *Zadvydas* Court expressed concern about indefinite custody under § 1231(a)(6) and held a that a six-month period of detention is presumptively reasonable. *Id.* at 701. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* In contrast, § 1225(b)(1) does not "contain an implicit 6-month limit on the length of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). In § 1231(a)(6), Congress used the word "may" and "left the permissible length of detention . . . unclear." *Id.* at 299-300. Section 1225(b)(1) "mandate[s] detention until a certain point[.]" *Id.* at 300-01 (citation modified).

These principles led this Court to hold that relief under 8 U.S.C. § 1231(a)(6) is unavailable to Petitioner because "the *Zadvydas* construction does not apply to detention under Section

1225(b)[.]" *Esahaqzada*, 2025 WL 2933890, at *2. Once more, other cases support the Court's conclusion. *See, e.g., Singh v. Gillis*, No. 5:20-cv-121-DCB-MTP, 2021 1214787, at *1-2 (S.D. Miss. Mar. 3, 2021) ("The guidance regarding periods of detention that exceed six months as set forth in *Zadvydas* is not applicable to Petitioner, who is being detained pending his removal under 8 U.S.C. § 1225(b)(1)."); *Bertrand v. Holder*, No. CV-10-0604-PHX-GMS (JRI), 2011 WL 4356375, at *3-5 (D. Ariz. Aug. 16, 2011) (stating that if detention is governed by § 1225(b)(1)(B)(iii)(IV), "the Court's decisions in *Zadvydas*" and its progeny "do not apply to Petitioner").[1]

Although *Zadvydas* is inapplicable in this case, it bears emphasis that DHS has been and will continue to be diligent in attempting to remove Petitioner. DHS unsuccessfully attempted to remove Petitioner to Afghanistan in the spring of 2025 but restarted these efforts in October 2025 upon learning of a SLRRFF. *See supra* SOF. DHS also attempted to remove Petitioner to Saudi Arabia, Turkmenistan, Pakistan, and Canada. *Id.* Requests to Australia and the United Kingdom remain pending, and DHS's efforts to investigate these and other countries are ongoing. *Id.* In addition to continuing to rely on 8 U.S.C. § 1225(b), therefore, the Court should reject Petitioner's policy arguments about "indefinite detention." *E.g.*, ECF 1 at 2.

II. As an "arriving" and unadmitted alien, Petitioner is entitled only to the process provided by Congress, not to a bond hearing or periodic custody reviews

For "foreigners who have never been naturalized, nor acquired any domicil or residence within the United States, nor even been admitted into the country pursuant to law, the decisions of

[1] In response to Petitioner's first request for habeas relief, Respondents contended that jurisdiction was limited or barred by 8 U.S.C. §§ 1252(a)(2) and (e)(2). The Court rejected this argument, determining it had jurisdiction to rule that Petitioner had asserted a claim "under the *Zadvydas* framework" which was foreclosed by § 1225(b). *Esahaqzada*, 2025 WL 2933890, at *1 n.2. With respect to Petitioner's second request for habeas relief, Respondents preserve without waiving their jurisdictional challenge based on §§ 1252(a)(2) and (e)(2).

executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Thuraissigiam*, 591 U.S. at 138 (citation modified). An alien in Petitioner's position thus "has only those rights regarding admission that Congress has provided by statute." *Id.* at 140. This Court recognized this authority when addressing Petitioner's first request for habeas relief. *See Esahaqzada*, 2025 WL 2933890, at *1 ("An alien detained shortly after arriving is treated as an applicant for admission, and such an alien has no rights beyond those that Congress has provided by statute."); *see also Singh*, 2021 WL 1214787, at *2 ("Additionally, Petitioner's due process claims lack merit because he is in the category of unadmitted aliens whose protections are limited to those granted by Congress.").

8 U.S.C. § 1225(b)(1) does not reference the post-order custody review process commonly associated with *Zadvydas* and described in regulations such as 8 C.F.R. §§ 241.4 and 241.13. Congress did not require POCRs for aliens detained pursuant to § 1225(b)(1)(B)(iii)(IV), so this Court should not either. *See Alcazar v. Cantu*, No. CV-24-03342-PHX-JAT (DMF), 2025 WL 2548698, at *14-15 (D. Ariz. June 5, 2025) (ruling that an alien detained pursuant to § 1225(b) was "not entitled to release from detention, a bond hearing, or another type of hearing to consider her continued detention"); *Amaglobeli*, 2023 WL 4678428, at *1-2 (denying the habeas petition of an alien detained pursuant to § 1225(b), despite his allegation that "he received no 90-day or 180-day custody reviews outlined in the Code of Federal Regulations").

This Court rendered an analogous decision in *de la Rosa Espinoza v. Guadian*, No. 20-3126-JWL, 2020 WL 3452967 (D. Kan. June 24, 2020). There, after the petitioner was processed for removal under 8 U.S.C. § 1225(b)(1), his requests for asylum and parole were denied. *Id.* at *1-2. He filed a habeas petition alleging that "his prolonged detention without a bond hearing violates the Due Process Clause of the Fifth Amendment." *Id.* at *3. Citing *Jennings* and applicable

Tenth Circuit precedent, this Court determined that the petitioner, as an "arriving alien," was "owed only the procedural due-process protections as required by statute." *Id.* at *5-7 (citation modified). The Court rejected the notion of indefinite detention, noting "Petitioner's detention will end either when the government grants [him] asylum or when it removes [him]." *Id.* at *8 (citation modified). The Court concluded "the applicable statutory process shapes Petitioner's procedural due-process rights and Petitioner has no statutory right to release or a bond hearing." *Id.*; *see also Doe v. Bondi*, No. 1:25-cv-02712-DDD-SBP, 20205 WL 3516292, at *3-6 (D. Colo. Nov. 4, 2025) (agreeing with *de la Rosa Espinoza* and related Tenth Circuit authorities).

CONCLUSION

For the foregoing reasons, the habeas petition should be denied.

Respectfully submitted,

RYAN A. KRIEGSHAUSER
United States Attorney
District of Kansas

s/ Russell J. Keller
Russell J. Keller, #22564
Assistant United States Attorney
500 State Avenue, Suite 360
Kansas City, Kansas 66101
Telephone: (913) 551-6665
Facsimile: (913) 551-6541
Email: russell.keller@usdoj.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

I certify that on December 17, 2025, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will provide notice to all registered parties. I further certify that I caused a copy of the foregoing and the notice of electronic filing to be placed in the United States mail, postage prepaid, addressed to the following non-CM/ECF participant:

Mohammad Shekib Esahaqzada
Leavenworth Federal Correctional Institution
Inmate Mail/Parcels
P.O. Box 1000
Leavenworth, Kansas 66048

Pro Se Petitioner

s/ Russell J. Keller
Russell J. Keller
Assistant United States Attorney