IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

HAYATULLAH ZAHID, *Petitioner*, v. ANGEL GARITE, *et al.*, *Respondents.*	Case No. 3:25-cv-00563-KC HON. J. KATHLEEN CARDONE

RESPONSE TO SHOW CAUSE ORDER

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STATEMENT OF ISSUES

1. Whether Zahid, as an arriving alien, has any due process right to freedom from detention and release into the country, contrary to Fifth Circuit precedent.

2. Whether Zahid's pre-order mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) is unconstitutional, and whether his challenge to potentially forthcoming prolonged post-order detention is unripe.

3. Whether, in the alternative, post-order mandatory detention under 8 U.S.C. § 1231(a) is unconstitutional as applied to petitioner, to the extent the Court finds that § 1231(a)(1)(B)(ii) does not apply to the Fifth Circuit's stay of removal order.

INTRODUCTION

Respondents Angel Garite, Warden of the El Paso Service Processing Center; U.S. Department of Homeland Security; Pamela Bondi, Attorney General of the United States; Kristi Noem, Secretary of U.S. Department of Homeland Security; and Joel Garcia, Director of El Paso Field, U.S. Immigration and Customs Enforcement, hereby submit this response to the Court's order to show cause why the Petition for a Writ of Habeas Corpus ("Petition") filed on November 18, 2025, by Petitioner Hayatullah Zahid should de dismissed. *See* Order, ECF No. 4; *see generally* Pet. Writ Habeas Corpus ("Petition"), ECF No. 1. Petitioner is a native and citizen of Afghanistan. Petitioner has been detained as an arriving alien by U.S. Immigration and Customs Enforcement ("ICE") since February 28, 2024. Petitioner is inadmissible under 8 U.S.C. § 1182(a)(3)(B)(i)(I).[1] Petitioner was ordered removed by an Immigration Judge on November 28, 2024, and the Board of Immigration Appeals ("BIA") affirmed the removal order on April 29, 2025. To date, Petitioner remains in detention pending his removal.

Petitioner challenges his continued detention by ICE, claiming that the detention exceeds that required for purposes of effectuating removal pursuant to 8 U.S.C. § 1231(a) and does not bear a reasonable relationship to ensuring appearances at future hearing nor preventing danger to the community pending the completion of his removal. However, Petitioner fails to establish that his detention violates 8 U.S.C. § 1231(a) or the Fifth Amendment Due Process Clause. As such, ICE acted within its statutory and regulatory authority.

First, Petitioner is appropriately subject to detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) which permits that, when an immigration officer determine that an alien has a "credible fear of persecution[,]" "the alien shall be detained for further consideration of the

[1] "Any alien who has engaged in a terrorist activity is inadmissible."

application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii). Petitioner's arguments based on case law pertaining only to 8 U.S.C. § 1231 detention thus fail to prove his claims. Any claim challenging post-order detention—given that he is in pre-order detention—is unripe.

Second, Petitioner's mandatory detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) does not violate the U.S. Constitution and laws. Pursuant to "more than a century of [Supreme Court] precedent," inadmissible arriving aliens seeking admission, like the Petitioner, have only those rights provided by statute. *See DHS v. Thuraissigiam*, 591 U.S. 103, 138-39 (2020) (collecting cases); *id.* at 140 ("'[A]n alien seeking initial admission to the United States . . . 'has only those rights regarding admission that Congress has provided by statute.'"). Petitioner, inadmissible on terrorism-related grounds, does not acquire constitutional rights in this country through adverse possession.

Third, Petitioner has no constitutional right to a bond hearing. Section 1225(b)(1)(B)(ii) does not provide for a custody determination by this Court or a custody hearing before an immigration judge. *See also Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). Therefore, Petitioner has not demonstrated any legal basis for habeas relief, and the petition should be denied.

PROCEDURAL HISTORY OF THE INSTANT CASE

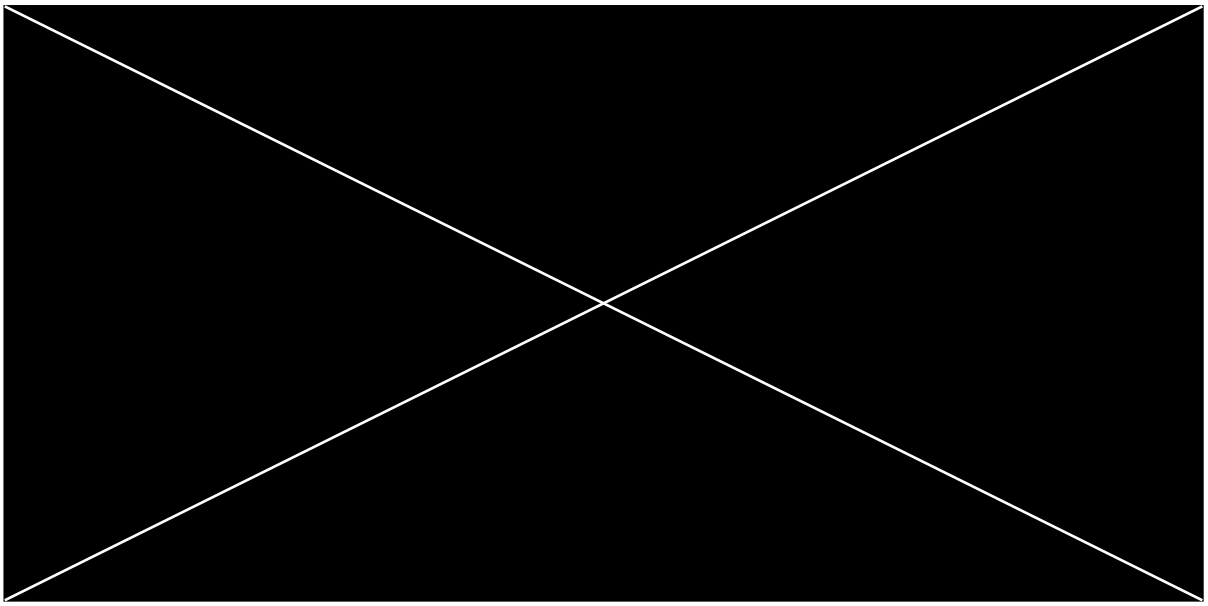
On November 18, 2025, Petitioner filed his petition for writ of habeas corpus, challenging his continued detention by ICE at the El Paso Detention Center in El Paso, Texas. *See generally* Pet. Petitioner seeks a writ to order Respondents to release him from ICE's custody on his own recognizance or under parole, low bond, or reasonable conditions of supervision. *See* Pet., Prayer for Relief ¶ 3. Petitioners bring two civil counts for declaratory and injunctive relief. Under Count I, Respondents allegedly violated 8 U.S.C. § 1231(a) by detaining Petitioner "beyond the removal period." *See* Pet. ¶¶ 76–78. Under Count II, Respondents allegedly violated the Due Process Clause

of the Fifth Amendment because Petitioner is neither a danger to the community nor presents a flight risk. *See id.* ¶¶ 79–84. Further, because Petitioner has not received a custody redetermination, he alleges that continued detention absent such review is unlawful. *Id.*

Petitioner also sought an Order to Show Cause, requiring Respondents to file a response demonstrating why the Petition should not be granted. *See* Mot., ECF No. 3. On November 20, 2025, this Court granted Petitioner's motion in part and found that the government must show cause for why the petition should not be granted. *See generally* Order, ECF No. 4.

RELEVANT FACTUAL BACKGROUND

Petitioner is a native and citizen of Afghanistan. *See* Pet. ¶¶ 9, 19. Petitioner initially entered the U.S. on February 28, 2024, as an arriving alien. *Id.* ¶ 19. He applied for asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and withholding under the Convention Against Torture ("CAT"). *Id.* As bases for these claims, Petitioner alleges that he



September 2022. *Id.* ¶ 23. Petitioner left Afghanistan for the U.S. on October 10, 2023. *Id.* ¶¶ 22, 24.

On November 18, 2024, an Immigration Judge denied Petitioner's asylum and withholding claims and issued an order of removal. *Id.* ¶¶ 9, 29. The immigration judge concluded that, although Petitioner "would have been eligible for asylum based upon his past persecution on account of his political opinion," he "is otherwise disqualified because of his material support to the Taliban." *Id.* ¶ 29; *see also* BIA Decision Dismissing Appeal at 4, attached as Ex. A ("The Immigration Judge concluded [Petitioner] [redacted] which he considered a terrorist organization under the INA, and this determined he was ineligible for asylum and withholding on that basis.").

Petitioner submitted a motion to reconsider the CAT deferral and the asylum denial before the Immigration Judge on December 10, 2024. Pet. ¶ 34. On December 12, 2024, the Immigration Judge denied the motion to reconsider. *Id.*; *see also* Order of the Immigration Judge, attached as Ex. B. On December 17, 2024, Petitioner appealed the decision to the BIA. Pet. ¶ 34. On February 10, 2025, Petitioner filed a motion to remand for CAT deferral based on new evidence, arguing that the Taliban continued to threaten him for his role in the prior government and involvement in protests. *Id.*

On April 29, 2025, BIA denied his motion to remand and dismissed his appeal, thereby affirming Petitioner provided material support to a terrorist organization pursuant to 8 U.S.C. § 1182(a)(3)(B)(i)(I) and has not demonstrated eligibility for deferral of removal under CAT. *Id.* ¶ 36; *see also* Ex. A at 4–5. On May 29, 2025, Petitioner filed a petition for review of BIA's decision to deny the motion to remand. Pet. ¶ 36. Petitioner submitted a motion to stay removal pending appeal in the Fifth Circuit, which was granted by a Fifth Circuit panel over the government's opposition on July 28, 2025. *Id.*

Also, on May 29, 2025, Petitioner filed a motion to reconsider the CAT deferral before the BIA. *Id.*; *see also* BIA Decision Denying Motion, attached as Ex. C. On August 28, 2025, BIA denied the motion, finding Petitioner has not established any legal or factual error in its prior decision. *Id.*; *see also* Ex. C. at 3. On September 25, 2025, Petitioner filed a petition for review of BIA's decision to deny the motion to reconsider. *Id.* ¶ 37. On October 21, 2025, the Fifth Circuit consolidated both pending petitions for review. *Id.* ¶ 37.

Separately, on September 1, 2025, U.S. Citizenship and Immigration Services ("USCIS") denied Petitioner an exemption to the "terrorist-related inadmissibility grounds rule," under which Zahid's asylum application was first denied. *Id.* ¶¶ 29, 39.

To date, Petitioner remains detained at the El Paso Detention Center pursuant to 8 U.S.C. § 1225(b).

ARGUMENT

I. Relevant Statutory Framework

The Immigration and Nationality Act ("INA") authorizes civil detention of aliens during removal proceedings and "[d]etention is necessarily part of this deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see also* 8 U.S.C. § 1225(b), 1226(a), and 1231(a). "Where an alien falls within this statutory scheme can affect whether his detention is mandatory or discretionary, as well as the kind of review process available to him if he wishes to contest the necessity of his detention." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

A. Detention Authority Pursuant to 8 U.S.C. § 1225(b)

The INA mandates the detention of applicants for admission. 8 U.S.C. § 1225(b)(1) and (2); *see also Jennings*, 583 U.S. at 287 (Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).").

Arriving aliens and aliens present less than two years are subject to expedited removal. 8

U.S.C. § 1225(b)(1). If an alien "indicates an intention to apply for asylum," the alien proceeds through the credible fear process and is subject to mandatory detention "for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii); *see also* 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. The Supreme Court recognized that 1225(b)(2) "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). While § 1225 does not provide for aliens to be released on bond, DHS has the sole and unreviewable discretion to release any applicant 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); *Ziae v. Garland*, No. 3:24-cv-01122-S-BT, 2024 LX 79340, at *7 (N.D. Tex. Nov. 8, 2024).

B. Detention Authority Pursuant to 8 U.S.C. § 1231(a)

The INA distinguishes between detention of aliens depending on where the alien is in the removal process. Relevant here, 8 U.S.C. § 1231(a) governs post-removal order detention, or the detention of aliens subject to final orders of removal. *See also Jennings*, 583 U.S. at 282–83. It provides, in part, that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). Section 1231(a)(2) requires the Attorney General to detain an alien during the 90-day removal period:

> During the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

8 U.S.C § 1231(a)(2); *see also Zadvydas v. Davis*, 533 U.S 678, 683 (2001). Upon expiration of the removal period, the Attorney General may continue to detain certain aliens or release them under conditions of supervision. 8 U.S.C. § 1231(a)(6); *see also Diaz-Ortega v. Lund*, No. 1:19-CV-670-P, 2019 WL 6003485, at *9 (W.D. La. Oct. 15, 2019) (citing *Diouf v. Mukasey,* 542 F.3d 1222, 1228 (9th Cir.2008)). Specifically, § 1231(a)(6) provides:

> An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6).

If an alien is detained past the removal period, however, the standards set forth in *Zadvydas* would apply. *Id.* at *5 (citing *Zadvydas*, 533 U.S. at 701). In *Zadvydas,* the Supreme Court held that § 1231(a)(6) does not authorize the Attorney General to detain aliens indefinitely beyond the removal period, but "limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas,* 533 U.S. at 689. However, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. To guide habeas courts, the Court recognized six months as a "presumptively reasonable period" of post-removal period detention. *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.*

However, none of the above matters if the § 1231(a) removal period is not triggered. The § 1231(a) removal period "begins on the latest of the following:"

i. The date the order of removal becomes administratively final.

ii. If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
iii. If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B)(i)-(iii).

II. Petitioner's Habeas Petition Should Be Dismissed.

A. Petitioner's Claim That His Continued Detention Exceeds That Required for Purposes of Effectuating Removal Pursuant to 8 U.S.C. § 1231(a) Is Premature.

To begin, Petitioner's claim that he is unlawfully detained pursuant to 8 U.S.C. § 1231(a) is premature and unripe. Under § 1231(a)(1)(B), the ninety-day period removal period commences on the later of three possible dates:

> (i) The date the order of removal becomes administratively final.
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

As noted above, Petitioner's order of removal became administratively final on April 29, 2025, when BIA affirmed the removal order issued by the Immigration Judge. The Fifth Circuit, however, granted Petitioner's motion for stay of removal on July 28, 2025. *See* Pet. ¶ 36; *see also* Decl. of Erica Estrada ¶ 14, Ex. D. Thus, Petitioner's removal order is being judicially reviewed by the Fifth Circuit, and his removal is stayed at the current time. Consequently, Petitioner's removal period has not yet commenced and will not commence until the court reviewing his removal order issues a final order. *See* 8 U.S.C. § 1231(a)(1)(B)(ii). Therefore, this habeas petition challenging Petitioner's detention under § 1231(a) is premature. *See Vetcher v. Lynch*, No. 15-cv-1653, 2015 WL 10551735, at *2 (W.D. La. June 15, 2015) (citing *Quiroz v. Young,* No. 2:07-cv-393, 2007 WL 2263084 (W.D. La. June 4, 2007)); *see also Wilson v. Mukasey*, No. 2:08-1646, 2010 WL 456777, at *8 (W.D. La. Feb. 2, 2010) (explaining that a "petitioner's detention continued to be governed under § 1226" pending a judicial stay of removal under § 1231(a)(1)(B)(ii)).

Petitioner contends that the removal period began when BIA affirmed the removal order on April 29, 2025. *See* Pet. ¶ 56 ("Here, the Court should first consider Mr. Zahid's detention pursuant to 8 U.S.C. § 1231(a)(6) because…[t]he 90-day removal period began for Mr. Zahid on April 29, 2025, when the BIA affirmed the IJ's removal order denying asylum and CAT protections."). However, this assertion ignores the plain language of § 1231(a)(1)(B)(ii), which states that § 1231(a)'s removal period does not begin "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien," until "the date of the court's final order." 8 U.S.C. § 1231(a)(1)(B)(ii). Here, the Fifth Circuit is reviewing his removal order and, on Zahid's motion, a panel from the Fifth Circuit stayed his removal order in its entirety over the government's opposition. Order (ECF No. 33-2), *Zahid v. Bondi*, No. 25-60296 (5th Cir. July 28, 2025). Consequently, Zahid is still in pre-order detention under § 1225(b)(1)(B)(ii). *See, e.g.*, *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 U.S. Dist. LEXIS 72761, at *8-9 (S.D. Cal. Apr. 25, 2023) ("Although the issuance of a final order of removal shifted Petitioner's detention authority to 8 U.S.C. § 1231, Petitioner's petition for review in the Ninth Circuit and the attendant judicial stay of his removal order shifted his detention authority back to 8 U.S.C. § 1225(b)(1)(B)(ii)[.]" (internal citations omitted)).

In his Petition, Zahid anticipatorily argues that what arguments he raised or did not raise in his Petition for Review is determinative of his detention authority. Pet. ¶ 57. But this contention is thoroughly unpersuasive, because: (1) he is appealing the BIA order that, *inter alia*, affirmed the denial of his asylum application and ordered his removal, meaning that—however unlikely he is to succeed—it remains pending review, and his removal order could potentially be set aside by the Fifth Circuit; (2) even if it is true that his Petition for Review brief did not contest the removal order in its entirety, it is still possible the Fifth Circuit would consider such a challenge if raised in

a reply or at oral argument;[2] and, (3) most importantly, in his Petition for Review, Zahid sought and obtained a stay of his removal *anywhere*. Nowhere in § 1231(a)(1)(B)(ii) is there any language indicating that the tolling provision only applies where the order of removal is challenged only in part. *See* 8 U.S.C. § 1231(a)(1)(B)(ii). Because his removal order is on review and because the Fifth Circuit has enjoined his removal without exception, it would not matter if his Petition for Review focuses on withholding-only relief. *See Ponce-Osorio v. Johnson*, 824 F.3d 502, 506 (5th Cir. 2016) ("...the rights, obligations, and legal consequences of the reinstated removal order are not fully determined until the reasonable fear and withholding of removal proceedings are complete."); *Herrera v. Mayorkas*, No. C24-1933-JNW-MLP, 2025 LX 300566, at *11 (W.D. Wash. May 19, 2025) (rejecting the same argument Zahid makes here); *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 U.S. Dist. LEXIS 72761, at *8-9 (S.D. Cal. Apr. 25, 2023) (same). Thus, the challenge to detention under § 1231(a) is unripe, because he is not yet in § 1231(a) detention.

B. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii).

Because Petitioner's application for asylum effectively remains pending the Fifth Circuit following the stay of removal, Petitioner is be detained in ICE custody pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) as an applicant for admission subject to mandatory detention during the pendency of his removal proceedings. Thus, Petitioner remains in lawful, mandatory detention during the pendency of his removal proceedings.

The INA defines an "applicant for admission" as "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated point of arrival...)." 8 U.S.C. § 1225(a)(1); *see also Jennings*, 583 U.S. at 287. When the

[2] While the Government would argue that doing so is improper under the forfeiture rules, applying those rules is a matter of discretion. *Little v. Llano Cty.*, 138 F.4th 834, 851 n.32 (5th Cir. 2025).

"examining" official "determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted," then that alien receives removal proceedings under 8 U.S.C. § 1229a. *Id.* § 1225(b)(2)(A). "Section 1225(b)(2) is broader" than § 1225(b)(1), and "serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1)." *Jennings*, 583 U.S. at 287. Importantly, § 1225(b)(2)(A) mandates detention until the conclusion of removal proceedings. *See Jennings*, 583 U.S. at 299.

In some circumstances, an immigration official may determine that an alien qualifies for expedited removal proceedings under § 1225(b)(1) and removal proceedings under § 1225(b)(2). The government has discretion to place aliens in standard removal proceedings even if the expedited removal statute could be applied to them. *See Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 524 (BIA 2011)); *see also Matter of M-S-*, 27 I. & N. Dec. 509, 510 (A.G. 2019) (stating "DHS may place him in either"). Ultimately, it is the manner in which an alien arrived and the timing and location of his arrest and detention, rather than the type of removal proceedings in which he may be placed, that determines his status as an applicant for admission under § 1225(b). *See Thuraissigiam*, 591 U.S. at 140 (An alien "who tries to enter the country illegally is treated as an 'applicant for admission.'") (quoting 8 U.S.C. § 1225(a)(1)); *id.* ("[A]nd an alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry,'" and is in the same position as an alien seeking admission at a port of entry) (quoting *Zadvydas*, 533 U.S. at 693).

i. Detention pursuant to 8 U.S.C. § 1225(b) does not violate the Constitution or laws of the United States.

Section 1225(b) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin." *Jennings*, 583 U.S. at 302. This conclusion conforms with the long-running understanding that the due process rights of arriving aliens are limited to what is provided by Congress. *See Shaughnessy v. U.S. ex rel. Mezei*,

345 U.S. 206, 212 (1953). The Supreme Court reaffirmed this in *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), where it held that "an alien at the threshold of initial entry" has no procedural due process rights "other than those afforded by statute." 591 U.S. at 107. "[Sections] 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time," namely "throughout the completion of applicable proceedings." *Jennings*, 583 U.S. at 299, 302; *id.* at 300 ("neither provision can reasonably be read to limit detention to six months.").

The Fifth Circuit has also passed on this exact question at least twice—that is, whether arriving aliens have any due process right to be free from indefinite detention pending a determination on whether to admit them. In *Gisbert v. U.S. Att'y Gen.*, the Fifth Circuit's answer was a resounding "no": "aliens [detained at or as if at the border] may legally be denied other due process rights [held by citizens and resident aliens, other than gross physical abuse], *including* the right to be free of detention." 988 F.2d 1437, 1442 (5th Cir. 1993). The only extra-INA constitutional right that Zahid has is "to humane treatment while detained within the United States." *Id.* The Fifth Circuit has repeatedly rejected the proposition that those in Zahid's position have any constitutional right to be free from indefinite detention or freed from detention into the U.S. *Id.*; *accord Rios v. INS*, 324 F.3d 296, 297 (5th Cir. 2003); *Parra-Parra v. Ashcroft*, 96 F. App'x 178, 179 (5th Cir. 2004) ("...there are no time limits on the detention of excluded aliens who have been denied entry...").

Even if Petitioner were not an applicant for admission held pursuant to § 1225(b), his detention is not indefinite, and it has not been unconstitutionally prolonged to the extent that some courts have found continued detention without a bond hearing violates due process. *See Lopez-Arevalo v. Ripa*, No. EP-25-CV-337, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025). Rather, Petitioner's removal is reasonably foreseeable at the conclusion of removal proceedings. *See*

Petgrave v. Aleman, 529 F. Supp. 3d 665, 674 (S.D. Tex. 2021); *see also Prieto-Romero*, 534 F.3d at 1063 ("[T]he 'basic purpose' of immigration detention is 'assuring the alien's presence at removal and . . . this purpose was not served by the continued detention of aliens whose removal was not 'reasonably foreseeable.'"). Petitioner foreseeably remains capable of being removed—even if it has not yet finally been determined that he should be removed or where he should (or should not) be removed to—and so the government retains an interest in assuring presence at removal. *See id.* at 1065. Indeed, an immigration judge has already denied Petitioner's requested relief and ordered him removed. Decl. of Erica Estrada ¶ 5. Given these facts, Petitioner's continued detention continues to "serve its purported immigration purpose." *See Demore v. Kim*, 538 U.S. 510, 527–28 (2003).

Nor is Petitioner's detention at the time of the filing of the Petition constitutionally prolonged. *Prieto-Romero*, 534 F.3d at 1065 (finding no constitutional violation in detention of more than three years under § 1226(a)); *Casas-Castrillon v. DHS*, 535 F.3d 942, 949 (2008) (finding no constitutional violation in detention of nearly seven years under § 1226(a)). And any speculative future claim that his detention will be prolonged, if or when the Fifth Circuit potentially resolves his Petition for Review against him, is unripe. *See Flaxman v. Ferguson*, 151 F.4th 1178, 1184 (9th Cir. 2025) (holding a claim is unripe if it rests upon "contingent future events that may not occur as anticipated, or indeed may not occur at all.").

Because Petitioner is an applicant for admission, he is not entitled to additional due process beyond what is provided to him by Congress. *Thuraissigiam*, 591 U.S. at 138. He does not have any due process rights to be freed from § 1225(b) detention and let loose into the country as an applicant for admission who has never effected an entry, especially where he is found to be inadmissible on terror-related grounds. *Gisbert*, 988 F.2d at 1442 ("...excludable aliens may

legally be denied other due process rights [other than freedom from gross physical abuse], *including* the right to be free of detention."). And because his detention is neither indefinite nor prolonged anyway, his detention under § 1225(b)(2)(A) would not violate the U.S. Constitution, even if the Constitution applied to him. *Prieto-Romero*, 534 F.3d at 1063. Therefore, Petitioner has failed to support his claims, and the Petition should be dismissed.

ii. Petitioner does have not a constitutional right to a bond hearing.

Petitioner provides no support or argument as to why he, as an individual detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), is entitled to an individualized bond hearing.

Section 1225 does not afford Petitioner a right to a bond hearing by this Court or before an immigration judge. *See Jennings*, 583 U.S. at 300 (holding that because an individual detained under § 1225(b) may be temporarily paroled under 8 U.S.C. § 1182(d)(5)(A), it is implie[d] that there are no other circumstances under which aliens detained under § 1225(b) may be released."); *cf.* 8 U.S.C. § 1226(a) ("the Attorney General may release the alien on bond . . . or conditional parole"). Because Petitioner is held in mandatory detention pursuant to 8 U.S.C. § 1225(b) pending further removal proceedings, Petitioner is not entitled to a bond hearing by statute. 8 U.S.C. § 1225(b) "mandate[s] detention of applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297. Neither provision "imposes any limit on the length of detention" or "says anything whatsoever about bond hearings." *Id.* Courts in this Circuit have held, by extending the logic of *Jennings*, that individuals in mandatory detention prior to removal are not statutorily entitled to a bond hearing. *See Petgrave*, 529 F. Supp. 3d at 674 ("[B]oth §§ 1225(b) and 1226(c) mandate detention without a bond hearing until removal proceedings have concluded, even if the detention becomes prolonged"); *see also Meme v. Immigr. & Customs Enf't,* No. EP-23-CV-00233-DB, 2023 WL 6319298, at *4 (W.D. Tex. Sept. 27, 2023) ("[Because] [Petitioner]

is still in removal proceedings, ... he does not have a right to a bond review, despite the length of his detention."); *see also Rimtobaye v. Castro*, No. SA-23-CV-1529, 2024 WL 5375786, at *3 (W.D. Tex. Oct. 29, 2024).

C. Should the Court Find That the Removal Period Has Commenced Under 8 U.S.C. § 1231(a), Petitioner is Still an Arriving Alien and Still Lacks Any Constitutional Right to Freedom from Detention.

Although Petitioner is lawfully detained under § 1225(b), detention under § 1231(a) is lawful even if the Court finds that the removal period commenced following BIA's order affirming the removal order. *See* Pet. ¶ 56. Petitioner brings forth both statutory and constitutional challenges to his post-removal period detention under § 1231(a). *See generally* Pet. Specifically, Petitioner alleges the government violated his rights in two ways. *First*, Petitioner alleges his continued detention is not authorized under 8 U.S.C. § 1231(a)(6) because his removal is not reasonably foreseeable. *See id.* ¶¶ 76–78. *Second*, Petitioner alleges that his continued detention violates his due process rights because his detention does not bear a reasonable relationship to ensuring his appearance at future proceedings or preventing danger to the community pending the completion of removal. *See id.* ¶¶ 79–84. For the reasons as more fully explained below, Petitioner has failed to state any basis for habeas relief, and the Court should dismiss the petition.

iii. Lawfulness of Petitioner's Detention

Petitioner's continued detention does not violate 8 U.S.C. § 1231(a)(6). The Court in *Zadvydas* construed § 1231 to comport with due process protections and ensure detention is not indefinite and potentially permanent. But *Zadvydas* itself contained a limitation clearly applicable here: those "treated for constitutional purposes as if stopped at the border" have no due process right to freedom from prolonged, or even indefinite, detention. *Zadvydas*, 533 U.S. at 693 (distinguishing *Shaughnessy*, 345 U.S. at 206), Here, Zahid *was* stopped at the border. Pet. ¶ 19.

Under *Zadvydas*, "that ma[kes] all the difference," *Zadvydas*, 533 U.S. at 693, and under *Gisbert*, he has no constitutional claim against the length of his detention, regardless of which statute governs, because he lacks any constitutional rights to freedom from detention. *Gisbert*, 988 F.2d at 1442.

Consequently, it does not truly matter whether Zahid is detained under §§ 1231 or 1225. As the Fifth Circuit has repeatedly recognized, *Gisbert*'s rule continues to apply to those who are arriving aliens, regardless of whether their removal order is final. *Rios*, 324 F.3d at 297 ("Although *Zadvydas* held that a deportable alien may contest his continued detention in a 28 U.S.C. § 2241 proceeding, the Court distinguished the status of deportable aliens from that of excludable aliens[.]"); *Benn v. Bureau of Immigration & Customs Enf't*, 82 F. App'x 139, 139 (5th Cir. 2003) (applying *Gisbert* in a post-removal order context). Any argument that an arriving alien ordered removed has a greater due process right to release than arriving aliens still under consideration for admission would be paradoxical and lacks any basis in Fifth Circuit law regardless.

But even pretending that *Zadvydas* did not expressly caveat out claims by arriving aliens such as Zahid, Petitioner's continued detention does not violate § 1231(a), as construed by *Zadvydas.* The Supreme Court in *Zadvydas* determined that § 1231(a)(6) is "ambiguous" because, although it appears to indicate that certain aliens ordered removed "may be detained beyond the removal period," it does not appear to limit the length of that post-removal period detention. *See Jennings*, 583 U.S. at 298 (citing *Zadvydas*, 533 U.S. at 699). Ultimately, the Court interpreted § 1231(a)(6) to comport with due process by construing it to limit post-removal period detention to a "period no longer than what is reasonably necessary to effectuate removal." *Zadvydas*, 533 U.S. at 689. In other words, if detention is no longer than reasonably necessary to

effectuate removal, it will comport with § 1231(a)(6), *Zadvydas*, and substantive due process protections. *See Hernandez-Esquivel v. Castro*, No. 5-17-cv-0564-RBF, 2018 WL 3097029, at *4 (W.D. Tex. June 22, 2018). Although the Court did not define what a "period no longer than what is reasonably necessary to effectuate removal" is, it explained that due process permits that "an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 689, 701. Recognizing that determining reasonableness likely entails a fact-intensive inquiry, the Court established a burden-shifting scheme, which takes effect after an alien has been detained longer than six months and under which the alien must first "provide[ ] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*; *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006). If the detainee meets that initial burden, "the Government must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701; *Andrade*, 459 F.3d at 543.

Here, Petitioner has failed to meet his burden in demonstrating there is no significant likelihood of his removal in the reasonably foreseeable future. *See Andrade*, 459 F.3d at 543. Rather, Petitioner's removal has been delayed solely because of his pending appeals in the Fifth Circuit. *See* Pet. ¶ 42 ("[Petitioner] has and will continue to face delays in the adjudication of his Fifth Circuit appeal… The resolution of the appeal is likely to take many more months if not years."); *see also id.* ¶ 45 ("Over the last 20 months, while Mr. Zahid litigated his asylum and convention against torture claims and raised these various challenges, he has been held in detention."); ECF No. 3 at 2, ¶ 3 (invoking the delay associated with ongoing efforts to challenge inadmissibility and CAT deferral as the reason removal is not likely in the reasonably foreseeable future). Petitioner states that, at the time his complaint was written, he had been detained for over 20 months and that "the appeal is likely to take many more months[,] if not years." Pet. ¶ 42.

Although there is no date certain for the resolution of the appeal, his detention is not indefinite. *See Linares v. Collins*, No. 1:25-CV-00584-RP, 2025 WL 2726549, at *6 (W.D. Tex. Aug. 12, 2025) (citing *Castaneda v. Perry*, 95 F.4th 750, 758 (4th Cir. 2024)); *see also Fuentes-De Canjura v. McAleenan*, No. EP-19-cv-00149-DCG, 2019 WL 4739411, at *5 (W.D. Tex. Sep. 26, 2019) (stating that to meet their burden under *Zadvydas*, aliens may not "merely offer conclusory statements suggesting that removal will not occur immediately following the resolution of their appeals"). As noted by this court in *Linares*, if Petitioner does not prevail in his pending appeals before the Fifth Circuit, "nothing should impede the government from removing him." *Linares*, 2025 WL 2726549, at *6 (quoting *Martinez v. LaRose*, 968 F.3d 555, 565 (6th Cir. 2020)). Further, Petitioner has not demonstrated that the delay is due to anything other than ordinary litigation processes. *See Linares*, 2025 WL 2726549, at *6 (citing *Castaneda*, 95 F.4th at 758 n.7). The Fifth Circuit's decision in *Thompson v. Holder* is squarely analogous to the present circumstances. In *Thompson*, the petitioner sought judicial review after BIA affirmed an order of removal. *Thompson v. Holder*, 374 F. App'x 522, 523 (5th Cir. 2010) (per curiam). The government sought, and received, a stay in Thompson's case pending a ruling in another case, and Thompson sought, and received, a stay of removal. *Id.* Thompson then filed a habeas petition seeking release on bond during the pendency of his appeal. The Fifth Circuit ultimately held that a petitioner's continued "detention [was] neither indefinite nor potentially permanent as there [was] a certain end point to the proceedings related to [petitioner's] pending petition for review and as it appear[ed] reasonably likely that he [would] be removed in the foreseeable future if his petition [were] denied." *Id.* Further, courts in this Circuit have continuously held that "aliens cannot assert a viable constitutional claim when their allegedly unreasonable prolonged detention is caused by their own plight." *Fuentes-De Canjura*, 2019 WL 4739411, at *7; *see also M.P. v.*

Joyce, No. 1:22-cv-06123, 2023 WL 5521155, at *4 (W.D. La. Aug. 10, 2023) ("'Courts in this Circuit have repeatedly held that detention is neither indefinite nor potentially permanent where the delay in removal is directly attributable to the litigation activity of the alien.'" (quoting *Virani v. Huron*, No. SA-19-cv-00499-ESC, 2020 WL 1333172, at *6 (W.D. Tex. Mar. 23, 2020))).

Petitioner fails to state a claim through his bare assertion that his detention is unlawful due to its length, given that his continued detention can be attributed only to the ongoing appellate proceedings he initiated to challenge his removability. Courts in this circuit have also recognized that it would invite potentially frivolous collateral challenges to unreviewable removal orders. It has been noted:

> "[C]ourts must be sensitive to the possibility that dilatory tactics by the removable alien may serve not only to put off the final day of deportation, but also to compel a determination that the alien must be released because of the length of his incarceration. Without consideration of the role of the alien in the delay, we would encourage deportable criminal aliens to raise frivolous objections and string out the proceedings in the hopes that a federal court will find the delay 'unreasonable' and order their release."

Wilson, 2010 WL 456777, at *9 (quoting *Ly v. Hansen*, 351 F.3d 263, 272 (6th Cir. 2003)).

Like the petitioner in *Hernandez-Esquivel*, Petitioner here also places undue emphasis on the six-month presumptive period by seeking to effectively transform it into a *de facto* bright-line outer limit for the length of detention. *See Hernandez-Esquivel*, 2018 WL 3097029, at *8. Rather, the Court's analysis under *Zadvydas* should focus on whether there is or could be good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. Here, even taking the facts alleged in the petition as true, there is no good reason to doubt that Petitioner will be removed in the reasonably foreseeable future should his appeal be denied. He has not alleged facts that, if proven true, would show his detention threatens to be either indefinite or potentially permanent so as to run afoul of *Zadvydas*.

Because Petitioner cannot demonstrate the threshold burden under *Zadvydas* (or that *Zadvydas* even applies to him), the Court's inquiry must end there. *See Zadvydas*, 533 U.S. at 701. *Zadvydas*'s constitutional avoidance cannon is unnecessary to apply to § 1231(a)(6), where, as here, there is no constitutional right implicated. *Rios*, 324 F.3d at 297. Even if Zahid (as an arriving alien) had a due process right to freedom from detention, he has not shown that his continued detention is unreasonable, and so due process would not require relief anyhow. *See Hernandez-Esquivel*, 2018 WL 3097029, at *8.

iv. No Right to a Bond Hearing

Because Petitioner, as an applicant for admission, lacks any constitutional right to freedom from indefinite detention, he is not entitled to a hearing process *in vacuo*. Because procedural due process rights exist to protect substantive due process rights, the underlying substantive due process right is an imperative to any procedural due process claim. The only legal reprieve from detention is ICE's exercise of discretionary parole under § 1182(d)(5)(A). The discretionary nature of that parole means there is no constitutional right to it. *Gisbert*, 988 F.2d at 1443 ("Because petitioners' interests here are contingent upon the Attorney General's discretion, they have no liberty interest in being paroled."). Therefore, he lacks any entitlement to a hearing because he lacks any liberty interest in release or parole.

CONCLUSION

For the reasons stated, the Court should dismiss Petitioner's habeas petition.

Dated: December 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2025, I served a copy of the foregoing on counsel for Petitioner via the Court's CM/ECF e-filing system.

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