United States District Court
Eastern District of Michigan

Ahmad Fareez Thabateh,

Petitioner,

v.

Sheriff Mat King, in his official capacity as Warden of the St. Clair County Jail,

Respondent.

Civil No. 25-14018

Honorable Robert J. White
Mag. Judge David R. Grand

Response to Petition for a Writ of Habeas Corpus

Respondent submits this response to petitioner's amended petition for a writ of habeas corpus, (ECF No. 4). As described in the attached brief, petitioner is a noncitizen subject to a final order of removal and his removal is likely in the foreseeable future. Therefore, his detention is proper under the Constitution and federal law.

Respectfully submitted,

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Dated: January 13, 2026

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Respondent's Brief in Support of His Response to Petition for a Writ of Habeas Corpus

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Issues Presented

I. Should the Court deny petitioner's request for a writ of habeas corpus when he is lawfully detained pursuant to a final order of removal under 8 U.S.C. § 1231?

II. Should the Court deny petitioner's request for a writ of habeas corpus when his detention complies with the Fifth Amendment?

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Introduction

Petitioner is a noncitizen who has been ordered removed to Israel and the Occupied Territories. In June 2025, immigration officials detained him under 8 U.S.C. § 1231 to execute his lawful removal. Officials have recently requested a travel document for Palestine and that request has not been denied. In addition, the agency has not exhausted alternative means of removal that do not require a travel document. Accordingly, the Court should reject petitioner's request for a writ of habeas corpus because his detention is proper under the plain language of § 1231 and the duration of his detention does not violate his procedural due process rights.

Background

Petitioner Ahmad Fareez Thabateh was born in Ramallah, West Bank, Israel. (Exhibit 1 – Suriano Decl. ¶ 4). He entered the United States in 1995 on a student visa. (*Id.* at ¶ 5). In 2000, Thabateh was convicted of Arson Burn Real Property in Pontiac, Michigan, and sentenced to one year of probation. (Exhibit 1 – Suriano Decl. ¶ 7). As a result of this conviction, ICE initiated removal proceedings against Thabateh in 2003. (*Id.* at ¶ 8). In particular, ICE charged Thabateh with removability under 8 U.S.C. § 1227(a)(2)(A)(i), which renders noncitizens removable if they commit a crime of moral turpitude within five years of a lawful admission. (*See id.*).

From 2003 until 2023, Thabateh challenged the charge of removability against him in administrative immigration proceedings. (*See* Exhibit 1 – Suriano Decl. ¶¶ 8–

19). In 2023, the Board of Immigration Appeals dismissed Thabateh's final appeal, which resulted in an administratively final order of removal to Isreal and the Occupied Territories. (*See id.* at ¶ 19; IJ Order, ECF No. 4-4, PageID.99; BIA Dec., ECF No. 4-5, PageID.102). On August 18, 2023, ICE placed Thabateh on the Alternatives to Detention program. (*Id.* at ¶ 20; Order of Supervision, ECF No. 4-6, PageID.103).

In September 2023, ICE scheduled a flight to remove Thabateh to the West Bank, however, that flight was cancelled before Thabateh's removal due to a war between Israel and Hamas. (Exhibit 1 – Suriano Decl. ¶¶ 21–22).

On June 10, 2025, ICE arrested Thabateh to execute his final order of removal. (Exhibit 1 – Suriano Decl. ¶ 23). In July 2025, ICE requested a travel document for Palestine. (*Id.* at ¶ 24). In addition, it may be possible to remove Thabateh to Israel without a travel document by charter flight if the agency is unable to obtain a travel document. (*See id.*). In September 2025, ICE conducted a 90-day custody review and decided to continue Thabateh's detention because it believed his removal was likely to occur in the reasonably foreseeable future and his detention was in the public interest. (*Id.* at ¶ 25; Custody Dec., ECF No. 4-7, PageID.108).

Standard of Review

A district court may grant a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or a federal law. 28 U.S.C. § 2241.

Argument

The Court should reject petitioner's argument that he is unlawfully detained. Petitioner is lawfully detained under 8 U.S.C. § 1231 because he is subject to a final order of removal. His detention does not violate the Due Process Clause because he is likely to be removed in the reasonably foreseeable future.

I. Petitioner is Lawfully Detained under 8 U.S.C. § 1231

The detention of a noncitizen subject to a final order of removal is governed by 8 U.S.C. § 1231. Under § 1231, "[d]uring the removal period, the Attorney General shall detain the alien." 8 U.S.C. § 1231(a)(2)(A). Further, a noncitizen ordered removed under 8 U.S.C. § 1227(a)(2) for crimes of moral turpitude may be released "[u]nder no circumstances" during that period. *Id.* After the initial removal period expires, the agency has discretion to continue to detain noncitizens pursuant to a final order of removal if they are ordered removed under § 1227(a)(2) for a crime of moral turpitude. 8 U.S.C. § 1231(a)(6). The statute does not entitle a noncitizen detained under § 1231 to a bond hearing and it sets no limit on how long the agency may detain a noncitizen pursuant to a final order of removal. *See* 8 U.S.C. § 1231(a); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581–82 (2022) (holding that

noncitizens detained under § 1231 were not entitled to bond hearings).

Here, petitioner is lawfully detained under § 1231. Petitioner is subject to an administratively final order of removal. (*See* Exhibit 1 – Suriano Decl. ¶ 19; IJ Order, ECF No. 4-4, PageID.99; BIA Dec., ECF No. 4-5, PageID.102). He was ordered removed under § 1227(a)(2) for a crime of moral turpitude. (Exhibit 1 – Suriano Decl. ¶ 8). Therefore, § 1231 expressly grants the agency discretion to detain him without a bond hearing until his removal. *See* 8 U.S.C. §§ 1231(a)(1), (2), (6); *Arteaga-Martinez*, 596 U.S. at 581–82.

II. Petitioner's Detention Does Not Violate the Due Process Clause

Under 8 U.S.C. § 1231, a noncitizen must be detained for 90 days pursuant to a final order of removal. 8 U.S.C. §§ 1231(a)(1), (2). In addition, noncitizens ordered removed under 1227(a)(2) for crimes of moral turpitude may be detained beyond the 90-day initial removal period if ICE concludes that the noncitizen is unlikely to comply with the order of removal or poses a danger to the community.[1] 8 U.S.C. § 1231(a)(6). ICE's detention of noncitizens under § 1231(a)(6) beyond the initial 90-day removal period is presumptively lawful under the Fifth Amendment for at least another 90 days. *See* 8 U.S.C. § 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701

[1] While the statute refers to the Attorney General, Congress has delegated the power to enforce the Immigration and Nationality Act to the Department of Homeland Security 8 U.S.C. § 1103; *see also Nielsen v. Preap*, 586 U.S. 392, 397 n.2 (2019).

(2001).

Detention beyond 180 days after a final order of removal does not presumptively violate the Fifth Amendment. *Zadvydas*, 533 U.S. at 701. "To the contrary, an alien may be held in confinement [after 180 days] until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* A petitioner seeking release under this standard bears the initial burden of demonstrating "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If the petitioner meets that burden, the burden shifts to the government to "respond with evidence sufficient to rebut that showing." *Id.*

Using this standard, courts have found that detention after a final order of removal lasting more than two years did not violate the Fifth Amendment even when detention was likely to last an additional year or more, so long as there was no evidence that some identifiable barrier would ultimately block removal at the end of that time. *See, e.g.*, *Martinez v. Larose*, 968 F.3d 555 (6th Cir. 2020). For instance, in *Martinez*, a noncitizen entered the United States unlawfully and was removed, then unlawfully re-entered in December 2017 and was immediately detained pursuant to a final order of removal. *Id.* at 557–58. For the next two and a half years, he remained detained while he appealed his removal. *Id.* During that time, he sought release by seeking a writ of habeas corpus and arguing that his removal was not

foreseeable because his appeal would likely take at least another year to resolve and could take much longer. *Id.* at 565–66. However, the Sixth Circuit rejected that argument because there was no evidence indicating that removal would not be possible after the appeal process concluded; therefore, even a detention of several years would not violate the Fifth Amendment because no identifiable barrier ultimately prevented removal. *Id.*; *see also Mulla v. Adducci*, 178 F. Supp. 3d 573, 577 (E.D. Mich. 2016).

Other courts have similarly found that, in order to meet their burden under *Zadvydas*, petitioners must offer evidence of an identifiable barrier to removal like being stateless, an explicit refusal to issue a travel document, the lack of a repatriation agreement, political conditions that "render removal virtually impossible," or a delay in issuing a travel document that is "so extraordinarily long that the delay itself" indicates "that the documents will likely never issue." *See Ahmed v. Brott*, No. 14-5000, 2015 WL 1542131, at *4 (D. Minn. Mar. 17, 2015), *report and recommendation adopted*, 2015 WL 1542155 (D. Minn. Apr. 7, 2015) (collecting cases).

Here, petitioner has not shown that his removal is unlikely in the reasonably foreseeable future. Petitioner would have been removed in 2023 had events beyond the agency's control not interfered with his removal. (*See* Exhibit 1 – Suriano Decl. ¶¶ 21–22). The agency has recently requested a travel document for Palestine and a

determination on that request has not been made. (*See id.* at ¶ 24). If the agency cannot obtain a travel document, the agency may be able to remove petitioner to Israel by scheduling a charter flight. (*See id.*). Therefore, the record at this time indicates that petitioner's removal is likely in the reasonably foreseeable future. Petitioner's circular argument that his removal is impossible because it has not been completed yet is not sufficient to demonstrate that there is some identifiable barrier that will likely prohibit his removal in the next few years. *See, e.g.*, *Ahmed*, 2015 WL 1542131, at *4–5.

Conclusion

Respondent respectfully requests that the Court deny petitioner's petition for a writ of habeas corpus because he is not detained in violation of federal law or the Constitution.

Respectfully submitted,

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Date: January 13, 2026

Certificate of Service

I hereby certify that on January 13, 2026, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Zak Toomey
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Assistant U.S. Attorney