

United States District Court
Western District of Texas
San Antonio Division

Ali Khan Rahimi,
Petitioner,

v.

Immigration and Customs Enforcement, *et al*,
Respondents.

No. 5:26-CV-00036-JKP

**Federal¹ Respondents' Response in Opposition to
Petitioner's Writ of Habeas Corpus**

Respondents submit this response to the petition. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Rahimi ("Petitioner"), *pro se*, seeks release from civil immigration detention, claiming that his detention has become unreasonably prolonged, contrary to statute and the Due Process Clause. *See* ECF No. 1. Petitioner's claims lack merit, and this petition should be denied.

Petitioner is an applicant for admission with a final order removal, which mandates his detention. *See* Exh. A (ERO Declaration) ¶¶ 10–11; 8 U.S.C. §§ 1225(b); *see also* 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner argues his continued detention is prolonged. ECF No. 1 at 6. These arguments are 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

¹ The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action. The Federal Respondents are lawfully detaining Petitioner on a mandatory basis and have direct authority under Title 8 over custody decisions in his case.

has so shifted, Respondents can show that removal to Afghanistan is, in fact, likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner is a citizen of Afghanistan who entered the United States on September 11, 2024, without inspection. Exh. A at ¶¶ 2, 4. After a period of criminal confinement for illegal entry, he was transferred to ICE custody and processed for expedited removal under INA § 235; 8 U.S.C. § 1225(b)(1). *See* Exh. A at ¶¶ 5–6. Citizenship and Immigration Services issued a positive credible fear determination and served Petitioner a Notice to Appear. *See* Exh. A at ¶¶ 8–9; Exh. B at 1. On April 25, 2025, his application for relief from removal was denied and Petitioner was ordered removed. Exh. A at ¶ 10. Petitioner reserved appeal and his removal order did not become final until May 27, 2025. *Id* at ¶ 10.

On June 20, 2025, ERO San Antonio sent Petitioner's identification documents to the Removal Management Divisions (RMD) for approval. *Id* at ¶ 12. Understanding that Petitioner's expired Afghanistan passport could be used to travel, ERO San Antonio scheduled Petitioner for removal in August 2025. Exh. A at ¶ 13–14, 18. Due to an error, ERO San Antonio cancelled the August 2025 removal mission, and learned a new escort threat assessment would need to be completed. *Id* at ¶ 19. On August 20, 2025, ERO San Antonio received directions that individuals are no longer allowed to travel on expired passports, affecting Petitioner's removal *Id* at ¶ 20.

On September 12, 2025, ERO San Antonio submitted the Request for Afghan Transportation Letter, a document required for removal, to the U.S. Embassy in Qatar for delivery to the Afghan Embassy. Exh. A at ¶ 21. On December 3, 2025, ERO San Antonio prepared the travel document request and forwarded it to the RMD for review, while the travel document request was pending. *Id* at ¶ 22. On December 16, 2025, ERO San Antonio submitted the travel document

request and travel letter review to the DDO. *Id* at ¶ 23. On January 26, 2026, ERO San Antonio sent the travel letter request to the U.S. Mission Afghanistan in Doha for action. Exh. A at ¶ 27. ERO San Antonio continues working to secure the necessary documents for Petitioner's removal. *Id* at ¶ 29.

Reviewing Petitioner's detention, in July 2025, ERO San Antonio reviewed Petitioner's detention and determined Petitioner should remain detained. *Id* at ¶¶ 15–17. ICE served on Petitioner the continued detention decision. Exh. A at ¶ 17. In January 2026, ERO San Antonio completed the 180-day post order custody review and served on Petitioner ERO's decision to continue detention. *Id* at ¶¶ 25–26, 28.

ICE's FY2024 annual report documents 132 Afghanistan nationals were removed from the United States, the highest number of removals in the past five years. See <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> (last accessed Feb. 3, 2026). In FY2025, first quarter, 60 Afghanistan nationals were removed. See ICE Enforcement and Removal Operations Statistics | ICE (filtered by nationality and last accessed Feb. 3, 2026)

II. Petitioner Is Detained Until Removal on a Mandatory Basis Under 8 U.S.C. § 1225(b).

Petitioner's Notice to Appear shows he was first placed in expedited removal, under INA § 235(b)(1), 8 U.S.C. § 1225, and then in "full" removal proceedings, under INA § 240, 8 U.S.C. § 1229. Exh. B. As an application for admission, intercepted at or near the port of entry shortly after unlawfully entering, who indicates a fear of persecution, and whom an asylum officer determines has a credible fear of persecution or torture, Petitioner "shall be detained for further consideration of the application for asylum," properly described under § 1225(b)(1)(A)(ii), and not under the "catchall" provision. Compare 8 U.S.C. §§ 1225(b)(1)(A)(ii); 1225(b)(1)(B)(ii) with § 1225(b)(2)(A). Given the plain language of § 1225(a)(1), Petitioner cannot plausibly argue that

he is not an applicant for admission, as when he unlawfully entered the United States, he was placed in expedited removal. Exh. B; 8 U.S.C. § 1225(b)(1). Therefore, his detention is lawful.

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, Petitioner's detention is lawful. 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 at 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.

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 Afghanistan 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 May 27, 2025. Exh. A at ¶ 11. Petitioner, nonetheless, urges this Court to order that his continued detention pending removal is contrary to his substantive and procedural rights under the Fifth and the Fourteenth Amendment, because of the length of time spent in post-order custody. *See generally* ECF No. 1. Beyond this allegation, Petitioner fails to allege any reason, much less a “good reason,” to believe that there is no significant likelihood of removal in the foreseeable future. These claims are not only false, but they are also wholly insufficient under *Zadvydas*. *See Nogales v. Dept. of Homeland Sec.*, No. 21-10236, 2022 WL 851738 at *1 (5th Cir. Mar. 22, 2022) (citing *Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021)); *Akbar v. Barr*, SA-20-CV-01132-FB, 2021 WL 1345530 (W.D. Tex. Mar. 5, 2021); *see also Andrade*, 459 F.3d at 543–44; *Boroky v. Holder*, No. 3:14-CV-2040-L-BK, 2014 WL 6809180, at *3 (N.D. Tex. Dec. 3, 2014).

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 sixty (60) Afghanistan nationals were successfully removed in FY2025 (current as of January 2025). *See ICE Enforcement and*

Removal Operations Statistics | ICE *supra*. Prior to FY2025, 127 Afghanistan nationals were successfully removed in FY2024, showing an overall increase in successful removals to Afghanistan since FY 2022. *See* <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> *supra*. Specific to Petitioner, ICE initially attempted to remove Petitioner using his expired Afghanistan passport but was ultimately unsuccessful. Exh. A at ¶ 13, 19. Upon learning the expired document would not be sufficient to remove Petitioner, ERO has been attempting to obtain Petitioner's travel document and the travel letter. *See generally* Exh. A.

In other words, until Afghanistan refuses to issue a travel document to Petitioner, there is no reason to believe that Afghanistan is unlikely to accept him for repatriation. It has just not happened yet.

Once a travel document is issued, ERO sees no impediment to executing this final order of removal. 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.

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). The Fifth Circuit has not provided guidance to lower courts, post-*Arteaga-Martinez*, on the appropriate standard for reviewing a procedural due process claim alleged by an alien detained under § 1231, but the Fourth Circuit, post-*Arteaga-Martinez*, used the *Zadvydas* framework to analyze a post-order-custody alien's due process claims. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 10–14 (W.D. Tex. Aug. 12, 2025) (discussing *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) and *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)). To the extent this Court finds that any additional analysis is

required beyond the constitutional analysis outlined in *Jennings* and *Thuraiissigiam*, *supra*, this Court may look to *Zadvydas* to review the procedural claim at issue here. *Id.*

Additionally, the Fifth Circuit finds no procedural due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). Even if the Court were to find a procedural due process violation here, the remedy is substitute process. *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay in the provision of the 90-day and 180-day custody reviews). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990).

As an applicant for admission, Petitioner has received the maximum process afforded by Congress under the statutes, to include placement in “full” removal proceedings before an immigration judge. Such process included notice and an opportunity to be heard, including judicial review through the appellate court. Even after that process ran its course, ICE has conducted custody reviews of his detention, most recently in January 2026. Exh. A at ¶¶ 17, 28. This process addresses constitutional concerns that were identified in *Zadvydas*, allowing the alien notice and opportunity to be heard regarding continued detention pending removal. *See, e.g.*, 8 C.F.R. § 241.13. This process comports with Petitioner’s limited due process rights as an applicant for admission subject to a final order of removal. Petitioner’s procedural due process claim, like his substantive one, should be denied.

IV. Addressing the Court’s Order

The Court ordered Respondents to address and compare cases to this one. ECF No. 4 at 1. As argued *supra*, whether there is a significant likelihood that removal is reasonably foreseeable is case by case specific. Addressing the Court's opinion in *Sandoval Salinas*, this case is distinguishable because unlike Petitioner here, Mr. Sandoval Salinas was ordered removed and granted withholding of removal under CAT increasing the difficulty in removing Mr. Sandoval Salinas. 5:25-CV-1624-JKP *10. Additionally, Mr. Sandoval Salinas was initially released on an order of supervision which was later revoked, and this Court determined ICE did not make a determination that removal was foreseeable at the time of redetention. *Id* at *13. Here, Petitioner has not been released on an order of supervision.

Similar to Mr. Sandoval Salinas, the petitioner in *Shengelia* was ordered removed and granted withholding of removal to Georgia and detained for more than two years in post order custody. 5:25-CV-1545-JKP *2. Mr. Marquez-Amaya was ordered removed and granted withholding of removal and was redetained after a period of release on an order of supervision. 5:25-CV-1501-JKP *11–12. Mr. Puertas-Mendoza was ordered removed and granted withholding of removal and redetained after a period of release on an order of supervision. 5:25-CV-890-XR *12.

Importantly, these cases address detention of aliens only subject to third country removal based on the relief granted by the immigration judge. As the Courts noted, removal to a third country is not impossible but more difficult. The Courts also emphasized ICE detention without finding a third country willing to accept those petitioners. Petitioner here can be removed to his home country or any country willing to accept him. ICE has continued to obtain the necessary travel documents to remove Petitioner and has provided his post order custody reviews the

regulation requires. Respondents respectfully argue that analyzing Petitioner's case, this Court should deny the petition.

V. Conclusion

Petitioner's continued detention is mandatory under 8 U.S.C. § 1225(b) until his removal order is executed, and he has not shown that it has become unconstitutional. In the alternative, even under § 1231(a)(6), detention here would be considered lawful. Petitioner fails to show good reason to believe that there is no significant likelihood of removal to Afghanistan in the reasonably foreseeable future. As such, the burden has not shifted to ICE to show the opposite. Even if the burden had shifted, ICE could establish that removal is foreseeable. Additionally, ICE has afforded Petitioner procedural due process through his mandatory detention, including post-order custody reviews. Petitioner's continued detention, therefore, is comports with the law and with due process. It is not unreasonably prolonged, nor is it in violation of the INA or the Constitution. Accordingly, the Court should deny this petition.

Respectfully submitted,

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Certificate of Service

I certify that on February 3, 2026, I directed a copy to be mailed to Petitioner at the following address:

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/s/ Anne Marie Cordova
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