

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

ALISHER NORBOEV,	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-26-00107-SLP
	)	
TODD M. LYONS, ET AL.,	)	
Respondents.	)	

**RESPONDENT'S RESPONSE IN OPPOSITION TO  
PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS**

**INTRODUCTION**

Respondents submit this Response in Opposition to Petitioner's Petition for Writ of Habeas Corpus, brought pursuant to 28 U.S.C. § 2241 ("Petition") and filed on January 22, 2026. Petitioner seeks release from immigration custody alleging violations of the INA, due process and the Administrative Procedures Act "APA"). For the reasons addressed below, dismissal of the Petition is appropriate.

Petitioner's filing follows the same rejected template: a generalized due-process challenge to immigration detention coupled with demands for a bond hearing, burden-shifting, declaratory relief, APA review, and prospective injunctions governing future ICE custody decisions. As this Court has recognized, such claims exceed the narrow scope of habeas corpus and are foreclosed by controlling Supreme Court precedent.

Petitioner's detention is authorized by Congress under the Immigration and Nationality Act ("INA"), specifically 8 U.S.C. § 1231. Neither the Fifth Amendment nor § 2241 empowers this Court to rewrite the statutory detention scheme or impose procedures Congress declined to enact. The Petition should therefore be dismissed or denied.

### FACTUAL BACKGROUND

Petitioner Alisher Norboev is a citizen of Uzbekistan who entered the United States at or near San Luis, Arizona, on or about April 18, 2023. He states that he has since applied for asylum. Petition [Doc. 1] at 1, ¶ 1; at 3, ¶ 9.

On or about January 8, 2026, ICE officers detained him. *Id.* at 3, ¶ 11. He was transferred to the Cimmaron Correctional Facility, *id.* at 4, ¶ 12, then to the Diamondback Correctional Facility. Notice [Doc. 11].

He alleges that from April 2023 until he was detained in January 2026, "he continuously resided in Loveland, Ohio, awaiting the merits hearing in his pending asylum application." Petition [Doc. 1] at 3-4, ¶¶ 10, 14; *see also id.* at 6, ¶ 23 ("Petitioner has continuously resided in the United States since April, 2023, established his life in Ohio, and complied with all requirements following his release from DHS's/ICE's custody."); *id.* at 7, ¶ 25 ("[A]s stated above, Petitioner had been living openly in Ohio for almost three years, while occasionally traveling across the United States due to the nature of his work and business.").

He also alleges, “Petitioner has lived openly in the United States since May 25, 2023, established residence in New York, complied with all release conditions, and has no history suggesting dangerousness or flight risk.” *Id.* at 7, ¶ 26. ICE is responsible for effectuating Petitioner’s removal and for conducting custody determinations in accordance with the statutory and regulatory framework applicable to post-order detention. Ex. 1- Decl. of DO Honeycutt, ¶8.

Petitioner challenges the legality of his continued post-final-order detention and seeks immediate release from custody or, in the alternative, a court-ordered bond hearing. *Petition [Doc. 1]* ¶¶ 17, 22-24. Petitioner also seeks declaratory and injunctive relief related to ICE’s authority to detain him pending execution of the removal order. *Petition [Doc. 1]*.

## LEGAL FRAMEWORK

### I. STATUTORY AUTHORITY FOR POST-FINAL-ORDER DETENTION UNDER 8 U.S.C. § 1231(a)

Congress has expressly authorized detention of noncitizens following the entry of a final order of removal. Under 8 U.S.C. § 1231(a), DHS “shall” detain a noncitizen during the 90-day removal period, § 1231(a)(2), and may continue detention beyond that period where removal has not yet been effectuated, § 1231(a)(6).

The Supreme Court has construed § 1231(a)(6) to authorize continued detention so long as removal is reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 689–

701 (2001). Detention of up to six months following the start of post-final-order custody is presumptively reasonable, and the burden rests with the noncitizen to provide “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701; *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004).

Courts may not impose bond hearings, burden-shifting, or equitable limitations beyond those set forth in § 1231 and *Zadvydas*. *Jennings v. Rodriguez*, 583 U.S. 513, 538–44 (2018); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581–82 (2022).

## ARGUMENT

### I. PETITIONER’S DETENTION IS AUTHORIZED BY 8 U.S.C. § 1231 AND DOES NOT VIOLATE DUE PROCESS

#### A. The Petition Is Premature Under *Zadvydas* Because Petitioner Has Not Been Detained for Six Months

As an initial matter, Petitioner’s claim fails because it is premature under *Zadvydas v. Davis*. The Supreme Court held that detention under 8 U.S.C. § 1231(a)(6) is presumptively reasonable for six months following the start of post-final-order custody. 533 U.S. 678, 701 (2001). Only after that six-month period has elapsed does the burden shift to the noncitizen to provide “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

Courts assess prematurity as of the date the petition is filed, not based on the passage of time during litigation. *Soberanes*, 388 F.3d at 1311; *Akinwale v. Ashcroft*,

287 F.3d 1050, 1052 (11th Cir. 2002). Where, as here, Petitioner filed his habeas petition before the expiration of the six-month presumptively reasonable period, his *Zadvydas* claim fails as a matter of law and should be denied without reaching the merits. See *Diop v. Gonzales*, 2007 WL 2080173, at 2 (W.D. Okla. July 18, 2007).

**B. Removal Is Reasonably Foreseeable, Including Through Third-Country Removal**

Courts uniformly reject *Zadvydas* claims where DHS continues to pursue removal, including through alternative or third-country options. See *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004); *Shuaibu v. Gonzales*, 425 F.3d 1142, 1146–47 (8th Cir. 2005); *Lema v. INS*, 341 F.3d 853, 857–58 (9th Cir. 2003). The Government is not required to establish a fixed removal date, only that removal remains reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Speculation that diplomatic processes may take time or that a country has not yet issued travel documents does not convert lawful detention into indefinite detention. *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 425–26 (M.D. Pa. 2004).

Where DHS continues efforts to effectuate removal including through alternative countries Petitioner cannot establish that “there is no significant likelihood of removal in the reasonably foreseeable future,” and habeas relief is unavailable under § 1231(a)(6). *Zadvydas*, 533 U.S. at 701.

**II. THIS COURT LACKS JURISDICTION OVER CLAIMS ARISING FROM DETENTION AS AN ENFORCEMENT MECHANISM**

To the extent Petitioner challenges ICE’s decision to detain or re-detain him to effectuate removal, jurisdiction is barred by 8 U.S.C. § 1252. Section 1252(g) strips district courts of jurisdiction over claims arising from the decision to execute removal orders, and § 1252(b)(9) funnels all claims “arising from” removal proceedings into the petition-for-review process.

This Court has repeatedly applied these provisions to bar habeas challenges to re-detention undertaken to enforce removal. Other courts have reached the same conclusion. *Tazu v. Att’y Gen.*, 975 F.3d 292, 297–300 (3d Cir. 2020).

### **III. APA, DECLARATORY, AND PROSPECTIVE INJUNCTIVE RELIEF ARE UNAVAILABLE**

Petitioner’s attempt to invoke the Administrative Procedure Act (“APA”) and the Declaratory Judgment Act fails for multiple, independent reasons. As a threshold matter, the APA does not apply where (1) statutes preclude judicial review, (2) agency action is committed to agency discretion by law, or (3) another adequate remedy exists in a court. 5 U.S.C. §§ 701(a), 704. All three limitations apply here.

First, Congress has expressly limited judicial review of immigration detention and removal-related decisions through the INA’s comprehensive review scheme, including 8 U.S.C. § 1252. Where Congress has withdrawn or channeled jurisdiction, the APA’s general cause of action is unavailable. See 5 U.S.C. § 701(a)(1). Courts may

not use the APA to circumvent the INA's jurisdiction-stripping and channeling provisions.

Second, the decisions Petitioner seeks to challenge whether to detain, continue detention, or re-detain a noncitizen pending execution of a removal order—are committed to agency discretion by law. See 5 U.S.C. § 701(a)(2). Post-final-order detention determinations under 8 U.S.C. § 1231(a) and the implementing regulations involve discretionary judgments entrusted to DHS. Because there is “no meaningful standard against which to judge the agency’s exercise of discretion,” APA review is unavailable. *See Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 882 (1990).

Third, and independently dispositive, the APA is unavailable because habeas corpus provides an adequate remedy. Section 704 of the APA limits review to “final agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704. Where a noncitizen challenges the legality of confinement or seeks relief that would necessarily imply the invalidity of detention, habeas, not the APA, is the exclusive vehicle. The Supreme Court recently reaffirmed this principle, explaining that APA review is barred where habeas provides an adequate remedy and that claims seeking relief from immigration detention must proceed, if at all, through habeas. *Trump v. J.G.G.*, 604 U.S. 670, 9–10 (2025) (Kavanaugh, J., concurring).

Petitioner’s APA claim also fails because he does not identify any final agency action subject to review. APA review requires an action that marks the consummation

of the agency's decision-making process and from which legal consequences flow. 5 U.S.C. § 704; *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). Ongoing detention determinations and custody reviews under § 1231(a) are interlocutory, continuing enforcement actions not final agency actions and therefore fall outside the APA.

For similar reasons, the Declaratory Judgment Act (DJA) provides no basis for relief. The DJA does not confer jurisdiction or waive sovereign immunity; it merely supplies a remedy where jurisdiction otherwise exists. Where, as here, Congress has foreclosed review and the APA does not apply, the DJA cannot be used to manufacture jurisdiction or relief.

Finally, Petitioner's request for prospective injunctive relief—seeking to regulate ICE's future detention decisions is independently barred. Federal courts lack authority in habeas proceedings to issue forward-looking injunctions governing hypothetical future custody determinations. Such relief is unripe, non-justiciable, and beyond the limited scope of § 2241. This Court has repeatedly rejected similar requests. See *Zhe Min Jin v. Bondi*, No. CIV-25-1232-JD, slip op. at 27–28 (W.D. Okla. Nov. 4, 2025). Habeas relief, where available at all, is limited to addressing present unlawful custody not supervising future executive enforcement decisions.

In short, Petitioner's APA, declaratory, and injunctive claims are foreclosed by statute, jurisdictionally barred, and not cognizable in habeas. They should be dismissed without reaching the merits.

## CONCLUSION

Petitioner's detention is authorized by 8 U.S.C. § 1231(a) and consistent with controlling Supreme Court and Tenth Circuit precedent. His claims are premature, meritless, and exceed the permissible scope of habeas corpus. For the foregoing reasons, the Petition should be dismissed or denied in its entirety.

Dated, January 30, 2026,

Respectfully submitted,

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