

United States District Court  
Western District of Texas  
San Antonio Division

Rami Fayad Ghanem  
Petitioner,

v.

Pam Bondi, in her official capacity as  
Secretary, U.S. Department of  
Justice, *et al*,  
Respondents.

No. 5:26-CV-00662-OLG

**Federal<sup>1</sup> Respondents' Response in Opposition to  
Petitioner's Writ of Habeas Corpus**

Respondents timely submit this response. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Fayad Ghanem ("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.

Despite his allegation that there is "no basis" for his continued detention, Petitioner is subject to a final order removal dated May 9, 2025, which mandates his detention. *See* ECF No. 1 ¶ 6; Ex. A (ERO Declaration) ¶ 9; *see also* 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner argues his continued detention is baseless and violates his substantive and procedural rights under the Constitution's Fifth and Fourteenth Amendments. ECF No. 1 at 13. Finally, he claims he should be released until the Department of Homeland Security can return him to Syria. ECF No. 1 at 15. These arguments are insufficient reason to believe that removal is

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<sup>1</sup> 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.

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 has so shifted, Respondents can show that removal to Syria or a third country 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 native of Syria and citizen of Syria. Exh. A (ERO Declaration) ¶ 2. On October 19, 2024, Petitioner entered the United States, without inspection, near Eagle Pass, Texas. *Id.* at ¶ 4. On February 25, 2025, DHS issued Petitioner a Notice to Appear (NTA) alleging he is inadmissible to the United States as an alien present without admission or parole under INA § 212(a)(7)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* at ¶ 9. On October 19, 2024, Petitioner was charged in the U.S. District Court, Western District of Texas, Del Rio Division, with the misdemeanor offense of illegal entry 8 U.S.C. § 1325 and was convicted of this charge on January 7, 2025, sentenced<sup>2</sup> to 90 days imprisonment. Exh. A. at ¶ 5.

On May 9, 2025, an immigration judge ordered Petitioner removed from the United States and both parties waived appeal. *Id.* at ¶10. On June 17, 2025, ERO completed a Travel Document Request (“TDR”) for Petitioner and submitted it for review and approval. *Id.* at ¶ 11. That same day, Petitioner was served a Notice to Alien of File Custody Review. *Id.* Petitioner’s information was sent to the Syrian Mission by way of the U.S. Department of State for review and confirmation of citizenship. *Id.* at ¶ 12. On July 11, 2025, ERO Deportation and Detention Officer (“DDO”) requested a copy of the itinerary, but the docket officer was unable to provide it. *Id.* at ¶ 14. On or about August 7, 2025, San Antonio ERO served the Petitioner with a copy of the 90-Day POCR

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Decision to Continue Detention Letter which was signed by Petitioner. *Id.* at ¶ 17. Petitioner's docket officer received TDR guidance from HQ RIO on October 2, 2025. *Id.* at ¶ 18. The 150 Day Panel Memo was reviewed and returned to the docket officer for corrections. *Id.* at ¶ 19. A "TDR" status update for Petitioner was requested by San Antonio ERO on November 24, 2025. *Id.* at ¶ 20. Another status request from San Antonio ERO was emailed to DDO on January 1, 2026. *Id.* at ¶ 21. As of February 5, 2026, San Antonio ERO is awaiting a response on TRD and an itinerary from the travel unit. *Id.* at ¶ 22.

On June 30, 2025, Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, arguing prolonged detention is unreasonable. ECF No. 1 at 13. He seeks release from custody until ICE is able to remove him to Syria. ECF No. 1 at 13.

## **II. Detention Is Lawful Under 8 U.S.C. §1231(a)(6).**

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 a 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 Syria 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 9, 2025. Exh. A at ¶ 10; *see* 8 C.F.R. § 241.1; 1241.1(a). 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 his prolonged detention. ECF No. 1 at 2, 6. Beyond these conclusory allegations, 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. 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).

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 February 2026. Exh. A at ¶ 22. 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.

## **II. Conclusion**

The Court should deny this petition.

Respectfully submitted,

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**Certificate of Service**

I certify that on February 18, 2025, I mailed a copy of Response in Opposition to Petition for Writ of Habeas Corpus to Petitioner (*pro se*) at the following address:

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