

United States District Court
Western District of Texas
El Paso Division

CARLOS ALBERTO SOSA MORALES
Petitioner,

v.

PAM BONDI, *et al.*,
Respondents.

No. EP-26-CV-00345-DCG

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

Respondents submit this response per this Court's Order dated February 19, 2026. *See* ECF No. 2. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Sosa Morales ("Petitioner"), *pro se*, seeks release from civil immigration detention, claiming that his detention is unreasonably prolonged and that ICE cannot foreseeably remove him to a safe third country, contrary to statute and the Due Process Clause. *See generally* ECF No. 1. Petitioner's claims lack merit, and this petition should be denied.

Petitioner unlawfully entered the United States at an unknown place. *See* Exh. A (ERO Declaration) at ¶ 6. This mandates his detention. 8 U.S.C. §§ 1225(b); *see also* 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner argues that his detention has been unreasonably prolonged, which violates his substantive

¹ The named warden in this action is not a federal employee. The Department of Justice does not represent her 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.

and procedural rights under the Constitution's Fifth Amendment. ECF No. 1. This claim is insufficient to conclude 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 has so shifted, Respondents can show that removal to 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, a native and citizen of El Salvador, entered the United States on an unknown date at an unknown place. Exh. A at ¶ 6. Petitioner is an associate of the transnational criminal organization Mara Salvatrucha 13 (MS-13). *Id.* at ¶ 7. He is known by the nickname “Veneno” or “Poison” in English. *Id.* Petitioner has tattoos that are consistent with membership in MS-13, such as a crucifix with devil wings on his right arm. *Id.* at ¶ 8.

Petitioner has the following criminal history in the United States: (1) a June 14, 2010 arrest for False Statement to Law Enforcement out of Prince George County, Maryland; (2) an August 4, 2010 arrest for False Statement to Law Enforcement out of Prince George County, Maryland; (3) a May 24, 2014 arrest by Arlington County Police Department for Driving While Intoxicated and Driving Without a License, he was not convicted on either of these charges; (4) a May 19, 2016 arrest out of Prince George County, Maryland for Failure to Control Motor Vehicle/Collision and

Negligent Driving; (5) a June 27, 2016 conviction in the District Court for Montgomery County, Maryland for Driving Under the Influence of Alcohol, Petitioner was sentenced to 365 days incarceration—he was directed to report to ERO and he failed to report; (6) an April 20, 2017 arrest warrant was issued for Petitioner from the District Court for Prince George County, Maryland based on charges for Attempted Murder, Assault, Armed Robbery, and Firearm Use in a Felony Violent Crime, Petitioner was convicted on January 8, 2019 for Conspiracy to Commit Assault and sentenced to 1459 days incarceration. *Id.* at ¶ 10. An ERO detainer was lodged at this time, which was not honored by state law enforcement; and (7) a February 25, 2024, charge out of the District Court for Prince George County, Maryland for Possession of a Loaded Handgun. *Id.*

Petitioner has the following criminal history in El Salvador: (1) a June 13, 2001 arrest for Assault; (2) an October 7, 2003 arrest for Commercial Drug Trafficking; (3) a December 14, 2004 arrest for Illicit Groupings; (4) a December 22, 2004 arrest for Illicit Groupings; (5) a December 15, 2006 arrest for Commercial Drug Trafficking of Cocaine; (6) and a July 4, 2007 arrest for Illicit Groupings. *Id.* at ¶ 11.

On April 23, 2024, Petitioner was issued a Notice to Appear (NTA) in immigration court and was placed in “full” removal proceedings. *Id.* at ¶ 12. On November 13, 2024, Petitioner was granted deferral of removal to El Salvador by an Immigration Judge. *Id.* at ¶ 13. In other words, Petitioner can be removed to any country except El Salvador. *Id.* On January 24, 2025, Petitioner was served with Form I-229a, Warning for Failure to Depart. *Id.* at ¶ 14. On January 27, 2025, ERO

issued Form I-241, Notification of Third Country Removal, and ERO began working to identify a possible country of removal. *Id.* at ¶ 15.

On March 3, 2025, ERO completed a 90-day post order custody review (POCR). *Id.* at ¶ 16. ERO determined that Petitioner would remain in custody due to flight risk and danger to the public. *Id.* ERO worked with ICE Headquarters for assistance in identifying a third country for removal. *Id.* at ¶ 17. On May 27, 2025, ERO completed a 180-day POCR and determined that Petitioner would remain in custody pending removal to a third country. *Id.* at ¶ 19. On June 11, 2025, ERO identified Mexico as a possible country of removal. *Id.* at ¶ 20. On June 23, 2025, Petitioner was charged with violating various detention policies, including disruptive conduct and refusing an order. *Id.* at ¶ 21.

On September 13, 2025, Petitioner was transferred to the El Paso Service Processing Center in El Paso, Texas for removal to Mexico. *Id.* at ¶ 23. On October 3, 2025, ERO completed a pre-removal checklist and removal packet for Petitioner. *Id.* at ¶ 24. That same day, Petitioner was pending nomination for the Cuba, Venezuela, Nicaragua, Haiti (CVNH) removal to Mexico program. *Id.* at ¶ 25. Under this program, Salvadoran nationals may also be removed to Mexico. *Id.* On October 28, 2025, Petitioner refused to sign removal documents to be removed to Mexico and told ERO that he would not comply with removal to any country. *Id.* at ¶ 26.

On December 17, 2025, Petitioner was nominated for CVNH removal to Mexico. *Id.* at ¶ 27. On December 23, 2025, Petitioner refused to dress out for CVNH removal and claimed fear of removal to Mexico. *Id.* at ¶ 28. ERO referred Petitioner

to the United States Immigration and Citizenship Services (USCIS) for a Third Country Fear Screening. *Id.* at ¶ 29. On January 27, 2026, USCIS issued Petitioner a negative fear determination for Mexico. *Id.* at ¶ 30.

On February 4, 2026, Petitioner refused to comply with removal to Mexico and told ERO that he would not comply with removal to any country. *Id.* at ¶ 31. When aliens, such as Petitioner, refuse to comply with CVNH removal from the United States to Mexico at the El Paso, Texas Port of Entry, ERO transfers the individual to a facility in Florence, Arizona, that effectuates third country removals to Mexico for aliens who have failed to comply with removal orders. *Id.* at ¶ 32.

On February 28, 2026, Petitioner was again served with Form I-229a, Warning for Failure to Depart, which he refused to sign. *Id.* at ¶ 33. On February 28, 2026, ERO in El Paso made a request to ERO in Florence to transfer Petitioner to Florence, Arizona, and effectuate his removal to Mexico. *Id.* at ¶ 34. ICE anticipates no impediments to removing Petitioner to Mexico following his transfer to ERO Florence. *Id.* at ¶ 36.

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

This petition should be denied. Petitioner is lawfully detained until removal as an applicant for admission. 8 U.S.C. § 1225(b). The Fifth Circuit Court of Appeals recently held that aliens, like the Petitioner, who entered the United States illegally and who are not “clearly and beyond a doubt entitled to be admitted,” “shall be detained” under 8 U.S.C. § 1225(b)(2)(A), until the conclusion of their removal proceedings. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. Feb. 6, 2026).

“To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.” *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step in this process, *id.*, stating that all alien “applicants for admission . . . shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be deemed for purposes of this chapter an applicant for admission,” defining that term to encompass *both* an alien “present in the United States who has not been admitted *or* [one] who arrives in the United States” *Id.* § 1225(a)(1) (emphasis added).

Paragraph (b) of § 1225 governs the inspection procedures applicable to all applicants for admission. They “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to those “arriving in the United States” and “certain other”² aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.* § 1225(b)(1)(A)(i), (iii). Aliens falling under this subsection are generally subject to expedited removal proceedings “without further hearing or

² The “certain other aliens” referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply (b)(1)’s expedited procedures to an alien who “has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility,” subject to an exception inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including for a period of years.

review.” *See id.* § 1225(b)(1)(A)(i). But where the applicant “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer him for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is “found not to have such a fear,” he is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV). *See also Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 111 (2020).

Section 1225(b)(2) is “broader” than (b)(1), “serv[ing] as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings*, 583 U.S. at 287. Subject to exceptions not applicable here, “if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for a removal proceeding.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). DHS retains sole discretionary authority to temporarily release on parole “any alien applying 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).

Petitioner cannot dispute that he is an applicant for admission who was

“arriving in the United States” under § 1225(b)(1). *First*, consider the plain text. Statutory language “is known by the company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). “Seeking admission” and “appl[ying] for admission,” in this context, are plainly synonymous. Congress linked these two variations of the same phrase in § 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013). As a result, a person “seeking admission” is just another way of saying someone is applying for admission—that is, he is an “applicant for admission”—which includes both those individuals arriving in the United States and those already present without admission. *See* 8 U.S.C. § 1225(a)(1); *Lemus-Losa*, 25 I. & N. Dec. at 743.

Congress used the simple phrase “arriving alien” throughout § 1225. *E.g.*, 8 U.S.C. § 1225(a)(2), (b)(1), (c), (d)(2). That phrase plainly distinguishes an alien presently or recently “arriving” in the United States from other “applicants for admission” who, like Petitioner, have been present in the United States without having been admitted. *Second*, consider the statutory structure of § 1225(b). To be sure, § 1225(b)(1) applies to applicants for admission, like Petitioner, who are “arriving in the United States” (or those who have been present for less than two years) and provides for expedited removal proceedings. It also contains its own

mandatory-detention provision applicable during those expedited proceedings. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

And *third*, compare § 1225's mandatory-detention provisions alongside the discretionary-detention provisions of § 1226. "A basic canon of statutory construction" is that "a specific provision applying with particularity to a matter should govern over a more general provision encompassing that same matter." *Hughes v. Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024). Section 1226(a) applies to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is narrower, applying only to aliens who are "applicants for admission,"—a specially defined subset of aliens that explicitly includes those "present in the United States who ha[ve] not be admitted." *Id.* § 1225(a). *See also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) ("§ 1225(a) treats a specific class of aliens as 'applicants for admission,' and § 1225(b) mandates detention of these aliens throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of aliens pending removal is discretionary unless the alien is a criminal alien."). Because Petitioner falls squarely within the definition of individuals deemed to be "applicants for admission," the specific detention authority under § 1225(b) governs until removal.

When the plain text of a statute is clear, that meaning is controlling, and courts "need not examine legislative history." *Doe v. Dep't of Veterans Affs. of U.S.*, 519 F.3d 456, 461 (8th Cir. 2008). Indeed, "in interpreting a statute a court should always turn first to one, cardinal canon before all others." *Conn. Nat'l Bank v. Germain*, 503 U.S.

249, 253-54 (1992). The Supreme Court has “stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Id.* (citations omitted). Thus, “[w]hen the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” *Id.* (citing *Rubin v. United States*, 449 U.S. 424 at 430 (1981)).

Even if legislative history were relevant, nothing within it “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Indeed, the legislative history and evidence regarding the purpose of § 1225(b)(2) show that Congress did not mean to treat aliens arriving at ports of entry worse than those who successfully entered the nation’s interior without inspection. Congress passed IIRIRA to correct “an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by*, *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It “intended to replace certain aspects of the [then-]current ‘entry doctrine,’ under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). Any other interpretation would put aliens like Petitioner who crossed the border unlawfully in a better position than those who present themselves for inspection at a port of entry. *Id.* Aliens who presented at ports of entry have always been subject to mandatory detention under § 1225, while those

who successfully evaded detection and crossed without inspection have been until recently interpreted to be eligible for bond under § 1226(a).

Given the updates in the law, Petitioner's current detention is governed, still, by § 1225(b) until he is successfully removed from the United States. He is not entitled to a bond hearing, and the Supreme Court has already upheld the constitutionality of this mandatory detention provision in both *Jennings* and *Thuraissigiam*. Those cases, rather than the *Zadvydas* decision, control the constitutional analysis here. *See Thuraissigiam*, 591 U.S. at 140. As the Supreme Court noted, aliens detained under § 1225(b) are afforded only the process that Congress provided them by statute. *Id.* Congress intended to mandate the detention of aliens like Petitioner until removal. To the extent Petitioner was owed any process during this time, he has already exhausted the administrative remedies available to him under the statute. His detention until removal comports with due process.

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 any reason, much less a “good reason” to believe that removal to a third country 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 November 13, 2024. *See* Exh. A at ¶ 13; 8 C.F.R. § 1003.42(f)(2). Petitioner, nonetheless, urges this Court to order that his continued detention pending removal is unlawful, citing 8 U.S.C. § 1231(a)(1)(B)(i). *See generally* ECF No. 1. Petitioner also alleges that his detention violates the Administrative Procedure Act (APA) and due process. *See id.* Beyond these allegations, Petitioner fails to allege any "good reason" to believe that there is no significant likelihood of removal in the foreseeable future. This claim is not only unsubstantiated, but it is 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. ERO has been diligently working to secure

third country removal, despite Petitioner's failure to comply with ERO. *See* Exh. A at ¶ 35. The length of Petitioner's detention is of his own making. *Id.* However, Petitioner is expected to be successfully removed to Mexico in the near future. *Id.* at ¶¶ 34, 36. ICE anticipates no impediments to removing Petitioner to Mexico following his successful transfer to ERO Florence. *Id.* at ¶ 36. 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 *Thuraissigiam*, *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 presenting an asylum case before an Immigration Judge and being granted relief from removal to his home country. See Exh. A at ¶ 13. Even after that process ran its course, ICE has been working diligently to secure a third country of removal on Petitioner's behalf. See generally Exh. A. 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. APA CHALLENGES MAY NOT BE ASSERTED AS HABEAS PETITIONS

In this proceeding, Petitioner expressly challenges his civil detention. *See, e.g.*, ECF No. 1. Petitioner raises additional arguments under the APA which are not cognizable in habeas, and which is not covered under the \$5 habeas filing fee. As such, the APA claim and any other non habeas claim should be dismissed. *See Ndudzi v. Castro*, No. SA-20-CV-0492-JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)); *Lopez Contreras v. Bondi*, No. SA-25-CV-177-OLG, page 2, footnote 1 (W.D. Tex. February 20, 2026). “When a filing contains both habeas and non-habeas claims, ‘the district court should separate the claims and decide the [non-habeas] claims’ separately from the habeas ones given the differences between the two types of claims. *Id.* (collecting cases and further noting the “vast procedural differences between the two types of actions”). Given the differences, the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted. *Id.* at *3; *see also Montoya v. Noem*, SA-CV-1410-FB (W.D. Tex. Jan. 26, 2026) (dismissing all non-habeas claims without prejudice under Rules 12(b)(1) and (6)).

V. Conclusion

Petitioner’s continued detention is mandatory under 8 U.S.C. § 1225(b)(1) 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 a third country 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. See Exh. A at ¶¶ 16, 19. 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 March 4, 2026, I mailed a copy of Federal Respondents' Response in Opposition to Petitioner's Writ of Habeas Corpus to Petitioner (*pro se*) at the following address:

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/s/ Kenneth Cole Miller
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