

INTRODUCTION

1. Petitioner, TAYFUN CALISKAN, A-Number 226-032-193, is unlawfully detained by Respondents pursuant to 8 U.S.C. § 1231(a)(6) following a final order of removal, despite having been granted withholding of removal under INA § 241(b)(3).

2. Petitioner is a native and citizen of Turkiye.

3. On May 9, 2024, the Department of Homeland Security issued a Notice to Appear charging Petitioner as removable under INA § 212(a)(6)(A)(i) as a noncitizen present without admission or parole after entering near Tecate, California on or about May, 8, 2024.

4. On May 15, 2025, the Immigration Judge (“IJ”) granted Petitioner withholding of removal from Turkey under INA § 241(b)(3) and ordered the Petitioner removed to any country but Turkey.

5. The written Amended Order of the Immigration Judge, dated September 3, 2025, states that it is a summary of the oral decision entered on 05/15/2025. The oral decision in this case is the official opinion, and the immigration court issued this summary for the convenience of the parties.

6. Both parties waived appeal on the record. Accordingly, the removal order became administratively final on May 15, 2025, pursuant to 8 C.F.R. § 1241.1(b).

7. Petitioner has been detained since May 15, 2025, and remains in U.S. Immigration and Customs Enforcement (“ICE”) custody at Otero County Processing Center.

8. Because removal to Turkey is legally barred by the grant of withholding, and because no third country has agreed to accept Petitioner, his continued detention violates 8 U.S.C. § 1231(a)(6), *Zadvydas v. Davis*, and the Due Process Clause of the Fifth Amendment.

9. The 90-day statutory removal period expired on August 13, 2025.

10. The six-month presumptively reasonable detention period recognized in *Zadvydas v. Davis* expired on November 15, 2025.

11. Because removal is not significantly likely in the reasonably foreseeable future, Petitioner's continued detention violates 8 U.S.C. § 1231(a)(6) and the Fifth Amendment.

12. For the foregoing reasons, the Court should grant habeas relief and direct Respondents to release Petitioner.

JURISDICTION

13. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq.*

14. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

15. This Court retains jurisdiction to review the legality of post-final order detention under § 1231 notwithstanding 8 U.S.C. § 1252.

16. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

17. Venue is proper because Petitioner is detained at the Otero County Processing Center, which is within the jurisdiction of this District. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States. *See* 28 U.S.C. § 1391(e).

PARTIES

18. Petitioner is a native and citizen of Turkiye. He has been detained for over nine months and is currently detained at the Otero County Processing Center. He is in the custody, and under the direct control, of Respondents and their agents.

19. Respondent Dora Castro is sued in her official capacity as Warden of the Otero County Processing Center. Respondent Castro is the physical custodian of Petitioner.

20. Respondent Mary De Anda-Ybarra is sued in her official capacity as the Field Office Director of the El Paso Field Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (“ICE”).

21. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”). Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

22. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner’s detention and custody. Respondent Noem is a legal custodian of Petitioner.

23. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice. In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (“EOIR”), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

24. Petitioner is a native and citizen of Turkiye.

25. Petitioner entered the United States near Tecate, California, on or about May 8, 2024, without being admitted or paroled.

26. Upon information and belief, Petitioner was briefly detained and then released from detention by DHS, although Petitioner does not recall under what authority he was released.

27. On May 9, 2024, Petitioner was released by DHS and served with a Notice to Appear (“NTA”), which designated him as “an alien present in the United States who has not been admitted or paroled” and charged her with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) as an “alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.” *See* Ex. A, Notice to Appear.

28. Following Petitioner’s release, he timely filed a Form I-589, Application for Asylum, with the immigration court in August 2024. Removal proceedings were conducted before the Dallas Immigration Court.

29. On May 15, 2025, the Immigration Judge granted Petitioner withholding of removal under INA § 241(b)(3).

30. The Immigration Judge ordered Petitioner removed to any country but Turkey.

31. Both parties waived appeal at the hearing.

32. The removal order, therefore, became administratively final on May 15, 2025.

33. Petitioner was detained by ICE on May 15, 2025, and has remained in custody continuously since that date.

34. The statutory 90-day removal period under 8 U.S.C. § 1231(a)(1) has expired on August 13, 2025.

35. The six-month *Zadvydas* presumptive period expired on November 15, 2025.

36. Removal to Turkey is legally barred due to the grant of withholding of removal.

37. Upon information and belief, no third country has agreed to accept Petitioner.

38. Immigration and Customs Enforcement (“ICE”) has not provided evidence demonstrating a significant likelihood of removal in the reasonably foreseeable future.

39. Petitioner has no criminal history. Petitioner has substantial community ties, including family members in the U.S.

40. Petitioner is now detained at the Otero County Processing Center.

LEGAL FRAMEWORK

41. Pursuant to 28 U.S.C. § 2243, the Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response “within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed.” 28 U.S.C. § 2243 (emphasis added).

42. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

43. This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious.”). It also protects noncitizens who have been ordered removed from the United States and who face continuing detention. *Id.* at 690.

44. Furthermore, 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during “the removal period,” which is defined as the 90-day period beginning on “the latest” of either “[t]he date the order of removal becomes administratively final”; “[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court’s final order”; or “[i]f the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement.”

45. Although 8 U.S.C. § 1231(a)(6) permits detention “beyond the removal period” of noncitizens who have been ordered removed and are deemed to be a risk of flight or danger, the Supreme Court has recognized limits to such continued detention. In *Zadvydas*, the Supreme Court held that “the statute, read in light of the Constitution’s demands, limits [a noncitizen’s] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen’s] removal from the United States.” 533 U.S. at 689. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

46. In determining the reasonableness of detention, the Supreme Court recognized that, if a person has been detained for longer than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen’s due process right to liberty. 533 U.S. at 701. In this circumstance, if the noncitizen “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.*

47. The Court’s ruling in *Zadvydas* is rooted in due process’s requirement that there be “adequate procedural protections” to ensure that the government’s asserted justification for a noncitizen’s physical confinement “outweighs the ‘individual’s constitutionally protected

interest in avoiding physical restraint.” *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

48. The first justification of preventing flight, however, is “by definition . . . weak or nonexistent where removal seems a remote possibility.” *Zadvydas*, 533 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight prevention justification for detention accordingly is “no longer practically attainable, detention no longer ‘bears [a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). As for the second justification of protecting the community, “preventive detention based on dangerousness” is permitted “only when limited to specially dangerous individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at 690–91.

49. Thus, under *Zadvydas*, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–700. If removal is reasonably foreseeable, “the habeas court should consider the risk of the [noncitizen’s] committing further crimes as a factor potentially justifying the confinement within that reasonable removal period.” *Id.* at 700.

50. At a minimum, detention is unconstitutional and not authorized by statute when it exceeds six months and deportation is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701 (stating that “Congress previously doubted the constitutionality of detention for more than six months” and, therefore, requiring the opportunity for release when deportation is not

reasonably foreseeable and detention exceeds six months); *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

51. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein .

52. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

53. Petitioner has been detained by Respondents since May 15, 2025. He has now been detained for approximately nine months, including more than six months beyond the expiration of the statutory 90-day removal period.

54. Petitioner’s removal order became administratively final on May 15, 2025, when both parties waived appeal. The statutory removal period therefore began on May 15, 2025 and expired on August 13, 2025.

55. The six-month presumptively reasonable detention period recognized in *Zadvydas v. Davis* expired on November 15, 2025.

56. Petitioner was granted withholding of removal from Turkey. Removal to Turkey is therefore legally prohibited.

57. Upon information and belief, no third country has agreed to accept Petitioner, and Respondents have not presented evidence establishing a significant likelihood of removal in the reasonably foreseeable future.

58. Where, as here, removal is not reasonably foreseeable, continued detention is no longer reasonably related to the government's regulatory purpose of effectuating removal and therefore violates substantive due process. *See Zadvydas v. Davis*, 533 U.S. 678, 690, 699–700 (2001).

59. Petitioner's prolonged and indefinite detention has thus become punitive in effect and violates the Due Process Clause of the Fifth Amendment.

60. As a remedy, the Court should order Petitioner released from detention, or alternatively direct that an IJ hold a constitutionally adequate bond hearing.

COUNT TWO

Violation of 8 U.S.C. § 1231(a)

61. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

62. In *Mathews v. Eldridge*, the U.S. Supreme Court set forth the factors to consider in determining if government action deprives an individual's Fifth Amendment right to procedural due process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976) The *Mathews* factors are as follows: First, the private interest that will be affected by the official action; [S]econd, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; [Third], the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335.

63. As to the private interest factor, it is the "most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner "has perhaps the most acute private

interest known to personkind short of life itself: bodily freedom.” *Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 LX 327685, at *34 (D. Md. Aug. 24, 2025).

64. With respect to the second factor, erroneous deprivation of Petitioner’s liberty is at risk. Petitioner is not subject to detention under 8 U.S.C. § 1225(b) as DHS claims.

65. As to the third factor, there is no significant governmental interest in continuing to hold Petitioner in custody.

66. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention “beyond the removal period” only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 (“[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.”). Because Petitioner’s removal is not reasonably foreseeable, his detention does not effectuate the purpose of the statute and is accordingly not authorized by § 1231(a)

67. In *Zadvydas*, the Supreme Court held that once removal is no longer reasonably foreseeable, continued detention is not authorized by § 1231(a)(6).

68. Petitioner’s removal to Turkey is barred by the grant of withholding of removal.

69. No third country has agreed to accept Petitioner, and Respondents have not demonstrated that removal is significantly likely in the reasonably foreseeable future.

70. Because removal is not reasonably foreseeable, Petitioner’s continued detention exceeds the statutory authority provided under § 1231(a)(6) and is unlawful.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;

- (2) Enjoin Respondents from transferring Petitioner during the pendency of the instant action;
- (3) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately ;
- (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any other further relief this Court deems just and proper.

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, and I submit this verification on his behalf. Because Petitioner is detained at Otero County Processing Center and immediate relief is sought, counsel verifies this petition on his behalf pursuant to 28 U.S.C. § 2242. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 16th day of February, 2026.

/s/Muhammed Gulen

Muhammed Gulen