

District Judge Tiffany M. Cartwright

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FADI EL BITAR,

Petitioner,

v.

JULIO HERNANDEZ¹ *et al.*,

Respondents.

Case No. 2:26-cv-00919-TMC

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
April 7, 2026

I. INTRODUCTION

This Court should deny Petitioner's Petition for Writ of Habeas Corpus. Dkt. 1. Petitioner, a native and citizen of Lebanon who is subject to a final order of removal, challenges his post-removal-order detention on the grounds that removal is not likely in the reasonably foreseeable future under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and that prolonged detention without a bond hearing violates the Fifth Amendment Due Process Clause. Petitioner seeks immediate release or, alternatively, a prompt bond hearing at which the government bears the burden of proof. As set forth below, Petitioner's detention is fully authorized under 8 U.S.C. § 1231(a)(6) and remains

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents substitute Julio Hernandez for Camilla Wamsley.

1 well within the presumptively reasonable period recognized by *Zadvydas*, and is supported by
2 ongoing, good-faith third-country removal efforts initiated in direct response to Petitioner's own
3 requests. No bond hearing is required by statute or the Constitution in this post-order context. The
4 petition should be denied in full.

5 II. FACTUAL AND PROCEDURAL HISTORY

6 A. Petitioner Fadi El Bitar

7 Petitioner is a native and citizen of Lebanon. Declaration of Brett Booth (Booth Decl.) ¶ 3.
8 On January 22, 2025, he was apprehended near Sasabe, Arizona, shortly after unlawfully entering
9 the United States without admission or parole, in violation of the Presidential Proclamation
10 Securing the Border, Proclamation No. 10773, 89 Fed. Reg. 48487 (June 7, 2024). Booth Decl.,
11 ¶¶ 4,6; Declaration of Lawrence Van Daley (Van Daley Decl.), Exhibit (Ex.) 3, Form I-213.
12 Petitioner did not qualify for any exception to that proclamation. *Id.* He was initially processed for
13 expedited removal pursuant to 8 U.S.C. § 1225(b)(1). Van Daley Decl., Ex. 1, Expedited Removal.
14 After expressing a fear of return to Lebanon, Petitioner received a credible fear interview with U.S.
15 Citizenship and Immigration Services (USCIS). Booth Decl., ¶ 6. On April 16, 2025, USCIS
16 determined Petitioner lacked a credible fear of return to Lebanon. Booth Decl., ¶ 7; Van Daley
17 Decl., Ex. 2, USCIS Credible Fear.

18 On May 23, 2025, Enforcement and Removal Operations (ERO) officers in Tacoma re-
19 processed Petitioner and served a Notice to Appear, charging him as removable under 8 U.S.C. §
20 1182(a)(6)(A)(i). Booth Decl., ¶ 9; Van Daley Decl., Ex. 4, Notice to Appear. Petitioner has
21 remained detained at the Northwest Immigration Processing Center since that time.

22 On October 16, 2025, Petitioner received a full merits hearing before an Immigration
23 Judge. Booth Decl., ¶ 11. The Immigration Judge denied his applications for asylum and
24 withholding of removal, denied his request for post-conclusion voluntary departure, and ordered

1 him removed to Lebanon. Booth Decl., ¶ 11; Van Daley Decl., Ex. 6, Removal Order. The
2 Immigration Judge separately granted withholding of removal under the Convention Against
3 Torture, protecting Petitioner solely from return to Lebanon. *Id.* All parties reserved appeal rights,
4 yet no appeal to the Board of Immigration Appeals was filed. *Id.* The removal order therefore
5 became administratively final on or about November 15, 2025, upon expiration of the 30-day
6 appeal period.

7 In direct response to Petitioner's requests, ERO promptly transmitted third-country
8 removal inquiries to the governments of the United Kingdom (England), Canada, and Australia.
9 Booth Decl., ¶ 12. As of the present date, none of those countries has responded affirmatively, but
10 diplomatic efforts to secure acceptance and travel documents remain active and ongoing.

11 On February 7, 2026, ERO served Petitioner with a Notice of Custody Review followed
12 by a formal Notice of Custody Determination. Van Daley Decl., Ex. 7, Custody Review. After
13 careful consideration, ERO determined that Petitioner should remain in detention due to him being
14 a flight risk and because ERO has or expects to obtain the necessary travel documents to effectuate
15 his removal. Van Daley Decl., Ex. 8, Custody Determination. A Post Order Detention Review
16 (POCR) notice was provided to Petitioner on March 10, 2026. Booth Decl., ¶ 13.

17 B. Legal Background

18 1. 8 U.S.C. 1231(a)(6)

19 The detention of noncitizens with final orders of removal is governed by 8 U.S.C. §
20 1231(a), which establishes a 90-day removal period during which detention is mandatory to
21 facilitate removal. 8 U.S.C. §§ 1231(a)(1)(A), (a)(2). For noncitizens who are inadmissible,
22 removable for criminal offenses, or determined to be a risk to the community or unlikely to comply
23 with the removal order, detention may extend beyond this period. 8 U.S.C. § 1231(a)(6). To
24 address potential due process concerns under the Fifth Amendment, the Supreme Court in

1 *Zadvydas*, 533 U.S. 678, construed 8 U.S.C. § 1231(a)(6) to limit detention to a period reasonably
2 necessary to accomplish removal, establishing a presumptively reasonable six-month period after
3 the removal period begins. *Id.* at 689, 701. After six months, the noncitizen bears the initial burden
4 to provide good reason to believe there is no significant likelihood of removal in the reasonably
5 foreseeable future; if met, the burden shifts to the government to rebut that showing with evidence
6 of foreseeability. *Id.* at 701. The “reasonably foreseeable future” is not rigidly defined but
7 considers factors such as diplomatic efforts, travel document procurement, and alternative removal
8 options, without requiring a specific timeline. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1063
9 (9th Cir. 2008). This framework applies equally to inadmissible noncitizens. *Clark v. Martinez*,
10 543 U.S. 371, 377-78 (2005). Detention does not violate due process merely because it exceeds
11 six months; rather, it must be shown to be potentially indefinite, lacking a legitimate immigration
12 purpose. *Zadvydas*, 533 U.S. at 690-91; *see also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208
13 (9th Cir. 2022).

14 2. Third Country Removal

15 When the government seeks to remove an individual, it may do so through removal
16 proceedings involving an evidentiary hearing before an Immigration Judge (IJ). 8 U.S.C. § 1229a.
17 In removal proceedings, the IJ determines both whether the individual may be removed from the
18 United States and designates a country or countries to which they will be removed, subject to
19 DHS’s statutory authority under 8 U.S.C. § 1231(b)(2). *Id.*; 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. §
20 1240.10(f). The Immigration and Nationality Act (INA) sets out the process for determining the
21 country of removal. 8 U.S.C. §§ 1231(b)(2)(C)-(E); 8 C.F.R. § 1240.10(f).

22 The government is prohibited from removing a person to a third country where they may
23 be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. §
24 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Similarly, the government cannot remove a

1 person to a country where they would be tortured, a form of protection known as protection under
2 the Convention Against Torture (CAT). *See* Foreign Affairs Reform and Restructuring Act of
3 1998 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C. §
4 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. Withholding of removal and
5 CAT protection are mandatory, but “only restrict *where* the Government may remove a noncitizen
6 to, not *whether* the noncitizen is subject to removal.” *Rodriguez-Fernandez v. Bondi*, 2:26-CV-
7 00170-TMC, 2026 WL 445562, at *4 (W.D. Wash. Feb. 17, 2026) (quoting *Kumar v. Wamsley*,
8 No. C25-2055-KKE, 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). “Thus, even if the
9 IJ grants such protection, the removal order remains valid and enforceable, albeit not to the
10 identified country or countries of risk.” *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f);
11 *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th
12 Cir. 2004).

13 3. LEGAL AUTHORITY

14 This Court has jurisdiction over Petitioner’s habeas corpus petition under 28 U.S.C. § 2241,
15 which authorizes federal district courts to grant writs of habeas corpus to individuals in custody in
16 violation of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3). The petition
17 does not seek review of the removal order itself, which would be barred by 8 U.S.C. § 1252(a)(5),
18 but rather challenges the constitutionality of continued detention, thus invoking proper habeas
19 jurisdiction.

20 III. ARGUMENTS

21 A. Petitioner’s Continued Detention Does Not Violate Due Process

22 Petitioner prematurely seeks relief during the six-month *Zadvydas* “presumptively
23 reasonable” period. In *Zadvydas*, the Supreme Court construed 8 U.S.C. § 1231(a)(6) to contain
24 an implicit “reasonable time” limitation, authorizing post-removal-order detention only for the

1 period “reasonably necessary” to effectuate the alien’s removal. *Zadvydas*, 533 U.S. at 689. To
2 provide a clear, administrable rule, the Court established that detention for up to six months after
3 the removal order becomes administratively final is “presumptively reasonable.” *Id.* at 701. During
4 this period, courts do not require the government to justify continued detention on a case-by-case
5 basis. Only after expiration of the six-month presumptive period may an alien come forward with
6 “good reason to believe that there is no significant likelihood of removal in the reasonably
7 foreseeable future,” shifting the burden to the government to rebut that showing. *Id.*

8 Here, the Immigration Judge ordered Petitioner removed on October 16, 2025. Because
9 Petitioner reserved but did not file an appeal, the removal order became administratively final upon
10 expiration of the 30-day appeal period, on or about November 15, 2025. *See* 8 C.F.R. § 1241.1(c)
11 (“Upon expiration of the time allotted for an appeal if the respondent does not file an appeal within
12 that time”); 8 C.F.R. § 1003.39. As of April 2, 2026, Petitioner has been in post-removal-order
13 detention for approximately four months and two to three weeks. While this detention falls beyond
14 the 90-day removal period established in 8 U.S.C. §§ 1231(a)(1)(A), which would have expired at
15 or about February 15, 2026, it falls comfortably within, and well short of, the six-month
16 presumptively reasonable period recognized in *Zadvydas*, which will expire on or about May 15,
17 2026. Petitioner therefore cannot establish any violation of 8 U.S.C. § 1231(a)(6) or due process
18 at this time. *Zadvydas*, 533 U.S. at 701.

19 Even if the Court were to engage in a full *Zadvydas* inquiry notwithstanding the
20 presumptive reasonableness of the detention, Petitioner cannot satisfy his initial burden. He must
21 provide “good reason to believe” that removal is not significantly likely in the reasonably
22 foreseeable future. *Id.* Petitioner cannot make that showing. His withholding of removal under the
23 Convention Against Torture is strictly country-specific to Lebanon and does not bar removal to
24 any other willing nation. *See* 8 C.F.R. § 1208.17. ERO has been diligently pursuing exactly such

1 removal, transmitting third-country requests to the United Kingdom, Canada, and Australia in
2 direct response to Petitioner's own November 30, 2025, request for removal to those and other
3 countries. ERO's February 7, 2026, custody determination further found that travel documents are
4 anticipated. These concrete, ongoing diplomatic efforts distinguish this case from the "removable-
5 but-unremovable limbo" at issue in *Zadvydas*.

6 Additionally, ERO's determination that Petitioner presents a flight risk, made after formal
7 custody review under 8 C.F.R. § 241.4, provides further support for continued detention. The
8 government's strong interest in ensuring appearance for removal remains a valid factor. Because
9 the detention period is presumptively reasonable, active removal efforts are underway, and no
10 evidence suggests indefinite detention, Petitioner's continued detention under 8 U.S.C. §
11 1231(a)(6) is both statutorily authorized and constitutionally sound.

12 **B. Petitioner Is Not Entitled to Immediate Release or a Bond Hearing**

13 The Supreme Court has held that aliens subject to a final order of removal are detained
14 under 8 U.S.C. § 1231, not the pre-order detention provisions of 8 U.S.C. § 1226 that afford bond
15 hearings. *Johnson v. Guzman Chavez*, 594 U.S. 523, 528-29 (2021). In *Johnson*, the Court
16 explained that once a removal order becomes administratively final, detention is governed
17 exclusively by 8 U.S.C. § 1231(a), which contains no statutory entitlement to a bond hearing before
18 an Immigration Judge. *Johnson*, 594 U.S. at 544 ("§ 1231, not § 1226, governs the detention of
19 aliens subject to reinstated orders of removal, meaning those aliens are not entitled to a bond
20 hearing while they pursue withholding of removal"). The Court rejected the argument that
21 withholding-only proceedings somehow keep a removal order from being "final" for detention
22 purposes, emphasizing that 8 U.S.C. § 1231 addresses the practical problems of executing a
23 removal order, including third-country removal, while 8 U.S.C. § 1226 applies only while
24 removability itself remains undecided. *Johnson*, 594 U.S. at 539-44.

1 Here, Petitioner's removal order became final on or about November 15, 2025. His current
2 detention is therefore governed by 8 U.S.C. § 1231(a)(6). Petitioner's request for a bond hearing
3 at which the government would bear the burden of proof mirrors the procedural protections that
4 apply only in the pre-order context under 8 U.S.C. § 1226. *See Johnson*, 594 U.S. at 528-29. No
5 such hearing is required, or even authorized, under the post-order statutory scheme.

6 Petitioner identifies no authority requiring a judicial bond hearing with the government
7 bearing the burden in post-order 8 U.S.C. § 1231 detention, and none exists. The Supreme Court
8 has repeatedly distinguished post-order detention from pre-order mandatory detention,
9 emphasizing that the constitutional calculus changes once a final removal order issues. *See*
10 *Johnson*, 594 U.S. at 544; *see also Zadvydas*, 533 U.S. at 690-91. Because Petitioner's detention
11 is authorized by statute, remains presumptively reasonable, and has already received
12 constitutionally sufficient administrative review, his due process claim fails as a matter of law. He
13 is not entitled to immediate release or the bond hearing he requests.

14 **C. Petitioner's Apparent Challenge to Third-Country Removal Does Not Warrant**
15 **Habeas Relief**

16 To the extent Petitioner's petition can be read to challenge the prospect or manner of his
17 potential removal to a third country, that claim is premature, unripe, and not cognizable in this
18 habeas proceeding. No third country has accepted Petitioner for removal, no specific third country
19 has been designated as the destination, and no removal date has been set. Petitioner's withholding
20 of removal under the Convention Against Torture is strictly country-specific to Lebanon. *See* 8
21 C.F.R. § 1208.16(f) ("Nothing shall prevent the removal of an alien to a third country other than
22 the country to which removal has been withheld or deferred."). This protection does not bar ERO
23 from pursuing removal to any other willing nation, including those Petitioner himself requested.

24 Should a third country ultimately accept Petitioner, ERO will provide the required notice

1 and screening consistent with its regulations and any applicable class-wide orders (subject to any
2 stays). *See, e.g., D.V.D. v. Dep't of Homeland Sec.*, No. 25-cv-10676 (D. Mass.) (class action
3 addressing third-country procedural protections, portions of which remain subject to Supreme
4 Court stays).

5 **IV. CONCLUSION**

6 For the foregoing reasons, Respondents respectfully request that the Court deny the Petition
7 for Writ of Habeas Corpus in its entirety.

8 DATED this 2nd day of April, 2026.

9 Respectfully submitted,

10 s/ Lawrence Van Daley

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21 I certify that this memorandum contains 2,382
22 words, in compliance with the Local Civil Rules.
23
24

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers;

I further certify that on this date, I electronically filed the foregoing and following memorandum with supporting declarations and exhibits with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participants:

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DATED this 2nd day of April, 2026.

Respectfully submitted,

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