

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-561 (KMM/JFD)

Elvis Joel Tipan Echeverria and
C.R.T.V., a minor child by and through her
parent and guardian Elvis Joel Tipan
Echeverria,

Petitioner,

v.

Pamela Bondi, *et al.*,

Respondents.

**FEDERAL RESPONDENTS’
RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS**

Respondents submit this response to the petition for writ of habeas corpus pursuant to the Court’s briefing order. Because C.R.T.V. has been released, those claims are moot. This Response therefore addresses the validity of Petitioner Elvis Tipan Echeverria’s detention.

This is not one a typical 1225/1226 cases that this Court has addressed before. *See, e.g., Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025). Petitioner is properly detained under Section 1231 because he is non-compliant with the terms of his participation in the Family Expedited Removal Management program and is subject to an expedited final order of removal. He is subject to mandatory detention, and this Court should deny the Petition.

Factual Background

Elvis Joel Tipan Echeverria is a citizen and national of Ecuador. Declaration of William J. Robinson (“Robinson Decl.”) ¶ 4. USBP first encountered Petitioner on or about May 24, 2024, at or near Brownsville, TX. Tipan was processed as part of the Family

Expedited Removal Management (FERM) credible fear proceedings and was issued a Notice and Order of Expedited Removal, Form I-860. Robinson Decl. ¶ 6.

The FERM program was announced by ICE on May 10, 2023 as a “process for process for family units apprehended at the Southwest Border who are processed for expedited removal and indicate an intention to apply for asylum or express a fear of persecution or torture.” *See* ICE announces new process for placing family units in expedited removal proceedings (May 10, 2023), *available at* <https://www.ice.gov/news/releases/ice-announces-new-process-placing-family-units-expedited-removal> (last visited Jan. 24, 2026).

FERM is designed to ensure family units in the credible fear process participate in a timely credible fear interview with U.S. Citizenship and Immigration Services (USCIS) and any requested review by an immigration judge without being detained. Families who receive a final negative credible fear determination will generally be removed from the United States within 30 days from processing into expedited removal and referral to USCIS.

Id. FERM is “geared toward the fair, humane, and expedited processing and removal of family units that do not establish eligibility to remain in the United States.” DHS, US ICE Budget Overview, FY 2025 Justification to Congress at 229.¹

Pursuant to that policy, on May 28, 2024, TIPAN was placed on Alternatives to Detention (ATD) dual technology, GPS tracking and smartlink, given a date to report in at the ICE office at Ft. Snelling, MN on June 5, 2024 and scheduled for an asylum interview on June 12, 2024. Robinson Decl. ¶ 7.

¹ *available at* https://www.dhs.gov/sites/default/files/2024-04/2024_0308_us_immigration_and_customs_enforcement.pdf (last visited Jan. 24, 2026).

On June 17, 2024, after many failed attempts to contact TIPAN, he failed to report to the ICE office, was terminated from ATD and was deemed a FERM absconder. Robinson Decl. ¶ 8.

On January 22, 2026, United States Border Patrol (USBP) encountered, arrested, and detained Petitioner in Minneapolis, MN during Operation Metro Surge. USBP targeted Petitioner due to being a FERM absconder. Petitioner was with his minor daughter during this encounter. Robinson Decl. ¶ 10. On January 22, 2026, at 1540 hrs. (3:40 pm, CST), ICE Juvenile & Family Management Transportation & Compliance Unit (JFMTCU) Contractor took custody of TIPAN and his minor daughter at the St. Paul ERO Field Office for transport to the San Antonio Resident Office. Robinson Decl. ¶ 11.

On January 23, 2026 at 1540 hrs. (3:40 pm, CST), ICE JFMTCU Contractor transferred back custody of TIPAN and his minor daughter to ICE juvenile agents at St. Paul ERO Office. The minor was released to counsel on January 23, 2026. Robinson Decl. ¶ 12.

Tipan was interviewed and stated he wants to return to Ecuador as soon as possible. Tipan has an expedited removal order, and local ICE officials are working on getting a copy to produce to the Court as soon as possible. *Id.* In the meantime, Tipan is detained at the Bishop Henry Whipple Federal building awaiting placement in a local county jail.

ARGUMENT

Petitioner absconded from the FERM program, which, per its design, means that he “generally be removed from the United States within 30 days from processing into expedited removal.” <https://www.ice.gov/news/releases/ice-announces-new-process-placing-family-units-expedited-removal> (last visited Jan. 24, 2026). The United States has not denied Petitioner due process; the expedite removal order he faces is attributable to his failure to comply with FERM and complete the asylum process. The allegation in his Petitioner that he has a pending asylum claim appears to be inaccurate.

Because Petitioner is subject to mandatory detention pending his removal, his claims fail, and this Court should deny his habeas petition. ICE is prepared to remove him upon resolution of this habeas.

I. This Court does not have jurisdiction to review an expedited removal order.

Petitioner is subject to an expedited removal under 8 U.S.C. § 1225(b)(1). That statute provides:

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

Here, Petitioner met the requirements of 1225, but was enrolled in the FERM program. That program afforded him the opportunity to pursue an expedited asylum claim with his family in Minnesota. Petitioner did not, however, establish his asylum claim, or apparently

show up for his interview. Thus, he was issued an expedited removal order. Robinson Decl.

This Court, therefore, has no jurisdiction to review his detention in this habeas action. Under 8 U.S.C. § 1252(e)(2), “no court shall have jurisdiction to review” an expedited removal order, except to determine: (1) whether the petitioner is an alien, (2) whether the petitioner was ordered removed under the expedited removal process, and (3) whether petitioner can prove that he is a lawful permanent resident of the United States, refugee or asylee. 8 U.S.C. § 1252(e)(2). *See Smith v. U.S. Customs & Border Prot.*, 785 F. Supp. 2d 962, 968 (W.D. Wash. 2011) (“The Court lacks jurisdiction to inquire whether the expedited removal procedure was properly invoked in petitioner's case.”), *aff'd*, 741 F.3d 1016 (9th Cir. 2014).

II. Petitioner was afforded all the process due him.

An “expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause.” *Olim v. Wakinekona*, 461 U.S. 238, 250 n. 12 (1983). And the Supreme Court has held that applicants for admission such as Petitioner are only entitled to the protections set forth by statute and that “the Due Process Clause provides nothing more.” *Department of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Here, Petitioner did not apply for admission; he was encountered with his family after an unlawful entry, and then failed to comply with the terms of the program designed to quickly adjudicate his family’s claim to asylum.

The Supreme Court has long recognized that Congress exercises “plenary power to make rules for the admission of foreign nationals and to exclude those who possess those

characteristics which Congress has forbidden.” *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Pursuant to that longstanding doctrine, “an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). The broad scope of the political branches’ authority over immigration is “at its zenith at the international border.” *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004). Accordingly, “certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographical borders.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

The Supreme Court has explained that applicants for admission lack any constitutional due process rights with respect to admission aside from the rights provided by statute: “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned,” *Shaunessy v. Mezei*, 345 U.S. 206, 212 (1953), and “it is not within the province of any court, unless expressly authorized by law, to review [that] determination”. *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950). The Supreme Court reaffirmed “[its] century-old rule regarding the due process rights of an alien seeking initial entry” in *Thuraissigiam*, explaining that an individual who illegally crosses the border—like Petitioner—is an applicant for admission and “has only those rights regarding admission that Congress has provided by statute.” 591 U.S. at 139-40.

As explained by the Supreme Court, “[w]hen an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the country ...”. *Thuraissigiam*, 591 U.S. at 139. Stated further, “aliens

who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are ‘treated’ for due process purposes ‘as if stopped at the border.’” *Id.* (quoting *Mezei*, 345 U.S. at 215). The Court held that this same “threshold” rule applies to individuals, like Petitioner, who are apprehended after trying “to enter the country illegally” since by statute, such individuals are also defined as applicants for admission. *Id.* at 139-40. Treating such an individual in a more favorable manner than an individual arriving at a port of entry would “create a perverse incentive to enter at an unlawful rather than a lawful location” and therefore the Supreme Court rejected the argument that an individual who “succeeded in making it 25 yards into U.S. territory before he was caught” should be entitled to additional constitutional protections. *Id.* at 140.

Instead, applying the “century-old rule regarding the due process rights of an alien seeking initial entry[,]” the Court explained that aliens arrested after crossing the border illegally, such as Petitioner, have “only those rights regarding admission that Congress has provided by statute.” *Id.* at 140. The Court was clear: “the Due Process Clause provides nothing more” than the procedural protections set forth in 8 U.S.C. § 1225 that allow an individual to seek protection from removal if he fears return to his home country and also seek parole from the agency. *Id.*

The Supreme Court’s decision in *Thuraissigiam* is instructive. In relevant part, *Thuraissigiam* concerned a due process challenge raised by an alien apprehended 25 yards from the border, which he crossed illegally. 591 U.S. at 139. DHS detained and processed him for expedited removal because he lacked valid entry documents. *Id.* at 114. An asylum officer then determined that Mr. Thuraissigiam lacked a credible fear of

persecution. *Id.* Mr. Thuraissigiam petitioned for a writ of habeas corpus, asserting a fear of persecution and requesting another opportunity to apply for asylum. *Id.*

In its decision, the Supreme Court delineated the boundaries of due process claims that can be made by applicants for admission. Specifically, the Court held that for such aliens stopped at the border, “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.” *Id.* at 131 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)); *see also Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021) (“In concluding that Thuraissigiam’s due process rights were not violated, the Supreme Court emphasized that the due process rights of noncitizens who have not ‘effected an entry’ into the country are coextensive with the statutory rights Congress provides.”).

The U.S. Court of Appeals for the First Circuit also held that detention of an alien seeking admission to the United States does not violate due process in *Amanullah v. Nelson*, 811 F.2d 1, 9 (1st Cir. 1987). In that case, the Court explained that “the detention of the appellants is entirely incident to their attempted entry into the United States and their apparent failure to meet the criteria for admission—and so, entirely within the powers expressly conferred by Congress.” *Id.* The appellants were detained pursuant to 8 U.S.C. § 1225(b) and the Court found no due process violation in the denial of their parole applications “pending the ultimate (seasonable) resolution of the exclusion/asylum proceedings” as there was “no suggestion of unwarranted governmental footdragging in these cases” and because “prompt attention appears to have been paid to the administrative aspects of exclusion and asylum.” *Id.*

The Government has a strong interest in applying and enforcing the immigration laws as passed by Congress. This Court should apply the “century-old rule” reaffirmed in *Thuraissigiam, Mezei*. For the reasons set forth above, Petitioner’s detention is appropriate and constitutional.

III. Petitioner is subject to a final order of removal and detention under 8 U.S.C. § 1231 to effectuate his removal order.

Once an individual has been ordered removed and finally adjudged to lack any right to remain in the United States, his liberty interest is reduced, and the governing legal rules reflect this. For an alien subject to an administratively final removal order, detention is governed by 8 U.S.C. § 1231 (and its implementing regulations at 8 C.F.R. pt. 241). Under § 1231, “when an alien is ordered removed,” the Secretary of Homeland Security “*shall detain the alien*” “[d]uring the *removal period*.” 8 U.S.C. § 1231(a)(1)(A), (a)(2).² The “removal period” is the period during which DHS begins to take steps to execute the alien’s final removal order. *See id.* § 1231(a)(1)(A)-(B). The period begins on the latest of three dates: (i) the “date the order of removal becomes administratively final”; (ii) “[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order”; or (iii) “[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.” *Id.* § 1231(a)(1)(B)(i)-(iii).

² § 1231 and other provisions of the Immigration and Nationality Act refer to the “Attorney General,” but under the Homeland Security Act of 2002 many of those references are now read to mean the Secretary of Homeland Security. *See Straker v. Jones*, 986 F. Supp. 2d 345, 351 (S.D.N.Y. 2013).

Although § 1231 initially provides a 90-day period for the government to execute a final removal order, the removal period may be extended in certain circumstances. For example, certain aliens determined to be “a risk to the community or unlikely to comply with the order of removal” “may be detained beyond the removal period.” *Id.* § 1231(a)(6) (emphasis added); *see also id.* § 1231(a)(1)(C) (suspension of period in certain circumstances). And DHS conducts periodic post-order custody reviews to determine whether an alien subject to a final removal order should continue to be detained beyond the initial removal period. *See* 8 C.F.R. § 241.4 (addressing continued detention for inadmissible, criminal, and other aliens). An alien held beyond the removal period may seek release from DHS custody, by showing that “there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future.” 8 C.F.R. § 241.13(a). Beyond these statutory and regulatory mechanisms, the Supreme Court has held that an alien subject to a final removal order can file a habeas petition and seek release if he can show that his detention has become prolonged and that there is “no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701.

Here, Petitioner has been in custody for just a few days. To be eligible to enter that program, Petitioner had to have been: “processed for expedited removal; national[] of [a] countr[y] to which ICE maintains regular removal flights; and residing in a location under the jurisdiction of the ICE field office based in one of four FERM-destination cities.”

<https://www.ice.gov/news/releases/ice-announces-new-process-placing-family-units-expedited-removal>.

This Court is very familiar with the Supreme Court’s framework set out in *Zadvydas*, 533 U.S. at 678. Under *Zadvydas*, final-order detention is presumptively reasonable for a period of six months and DHS may continue to detain an alien “until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. The Petitioner bears the burden of making this showing. *Id.* Here, Petitioner incorrectly alleged that he was being detained under 8 U.S.C. § 1225(b)(2). There are no allegations to suggest that there would be any delay in his removal to Ecuador. ICE routinely removes people to Ecuador, and Petitioner’s removal is significantly likely in the reasonably foreseeable future. *E.g.*, <https://www.ice.gov/statistics> (showing 363 removals to Ecuador by the St. Paul district of ERO). In light of the plain language of § 1231 and the *Zadvydas* standard, this Court should deny the petition.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court dismiss the Petition without an evidentiary hearing.

Respectfully submitted,

Dated: January 25, 2026

DANIEL N. ROSEN
United States Attorney

s/ Ana H. Voss

BY: Ana H. Voss
Assistant U.S. Attorney
Attorney ID Number 483656DC
600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
Phone: 612-664-5600
Ana.voss@usdoj.gov
Attorneys for Federal Respondents