IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAEDEN CONDAPPA, Plaintiff, v. FIELD OFFICE DIRECTOR, et al., Defendants.	)	CASE NO.: 3:26CV933 JUDGE DAVID A. RUIZ MAGISTRATE JUDGE HENDERSON **RETURN OF WRIT**

I. INTRODUCTION

Petitioner Jaeden Condappa ("Petitioner") requests this Court grant his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. He is challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE") and seeking immediate release from ICE's custody. Petitioner's petition must be denied because he is lawfully detained pursuant to 8 U.S.C. § 1187, which governs the Visa Waiver Program ("VWP"). As part of the Visa Waiver Program, he waived any right to contest his removal, other than on the basis of an asylum application. Because Petitioner is a VWP violator, he is under mandatory detention pursuant to 8 U.S.C. § 1187. Therefore, the Petition should be denied and dismissed.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of the United Kingdom. (Dkt. 1, Pet., ¶ 14.) Petitioner admits that he entered the United States as a tourist, pursuant to the VWP, most recently on April 29, 2025. (*Id.*) Pursuant to the VWP, Petitioner was authorized to stay in the United States for up to 90 days. 8 U.S.C. 1181(a)(1). As a nonimmigrant visitor, Petitioner was required to depart the United States no later than July 27, 2025. (*See id.* Attach. A – I-94, PageID # 36.)

Petitioner failed to depart the United States by July 27, 2025. On August 2, 2025, he

married a U.S. citizen, Kaela Stanley. (Dkt. 1, Pet., PageID # 37.) On September 16, 2025, Stanley filed a Form I-130, Petition for Alien Relative, with U.S. Citizenship and Immigration Services ("USCIS") on Petitioner's behalf. (*Id.*, PageID # 38.) On October 27, 2025, Petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status based on his marriage to Stanley. (*Id.*, PageID # 39.) The I-130 and I-485 remain pending adjudication. (See attached Exhibit A: Serevitch Decl., ¶¶ 6-7.)

On February 23, 2026, Petitioner came to the attention of ERO Detroit (Cleveland) based on an investigative lead for targeted enforcement as a non-immigrant VWP visitor who remained in the United States beyond July 27, 2025, without authorization. (*Id.*, ¶ 8; Exhibit B: I-213, Record of Deportable/Inadmissisble Alien.) According to information provided by ICE's Homeland Security Investigations (HSI) Attaché in London, United Kingdom, Petitioner is wanted for failure to register as a sex offender, having child pornography on electronic devices, and also under investigation for rape in the United Kingdom. (Exhibit A: Serevitch Decl., ¶ 9; Exhibit B: I-213, Record of Deportable/Inadmissisble Alien.) Specifically, Petitioner is out on bail for rape and other sexual offenses including child sexual abuse material (CSAM) in the United Kingdom. (Exhibit A: Serevitch Decl., ¶ 10.) He has a civil Sexual Harm Prevention Order (SHPO) as he is being investigated for serious sexual offenses against children. He is wanted for failing to complete the notification requirements after the issuance of the SHPO. (*Id.*)

On February 24, 2026, Petitioner was taken into ICE custody based on a Warrant for Arrest of Alien (Form I-200), attached hereto as Exhibit C, and issued a VWP Notice of Intent to Issue a Final Administrative Removal Order (Form 71-058), attached hereto as Exhibit D. Petitioner claimed fear of returning to the United Kingdom and requested asylum. (Exhibit A: Serevitch Decl., ¶ 12.) Petitioner is currently detained in ICE custody at the Seneca County Jail in Tiffin, Ohio pursuant to section 217(c)(2)(E) of the Immigration and Nationality Act. (*Id.*, ¶ 13.)

On February 26, 2026, ICE issued Petitioner a Form I-863, Notice of Referral to Immigration Judge as a VWP violator for asylum-only proceedings in accordance with 8 C.F.R. § 208.2(c) for a determination of whether he is eligible for asylum or withholding or deferral of removal, and whether asylum shall be granted in the exercise of discretion. (*Id.*, ¶ 1; Dkt. 1, Pet., PageID # 42-43.) Petitioner filed an application for asylum with the Cleveland Immigration Court on or about April 16, 2026. (Ex. A: Serevitch Decl., ¶ 14.) On May 10, 2026, ICE issued Petitioner with a VWP Final Administrative Removal Order (Form 71-060) and he was served with the order on May 11, 2026. (*Id.*, ¶ 15) Petitioner's individual merit hearing on the asylum application is scheduled for May 28, 2026. (*Id.*, ¶ 16; Exhibit F: Automated Case Information.) Should Petitioner's application for asylum be denied, ICE is in possession of Petitioner's passport which is valid until March 18, 2034, and is not aware of any institutional barriers that would prevent his removal to the United Kingdom pursuant to the final order of removal. (Exhibit A: Serevitch Decl., ¶¶ 17-18.) *See* 8 U.S.C. § 1187(c)(2)(E) ("The government of the country accepts for repatriation any citizen, former citizen, or national of the country against whom a final executable order of removal is issued not later than three weeks after the issuance of the final order of removal.") If Petitioner prevails on the asylum application, he will be released.

III. ARGUMENT

I. Petitioner is subject to mandatory detention as a VWP violator that has been issued a final administrative order of removal.

As a condition of entry pursuant to the VWP, an alien waives all rights to contest removal except on the basis of asylum, in asylum only proceedings. 8 U.S.C. § 1187(b)(2); *see Bradley v. Attorney General*, 603 F.3d 235, 238 (3d Cir. 2010) (citing 8 U.S.C. 1187(a), (b)); s*ee also* Executive Office of Immigration Review ("EOIR"), Part II – OCIJ Immigration Court Policy Manual, 6.4 – Limited Proceedings, section (a), (b)(5), and (c), attached hereto as Exhibit G.

"Asylum-only proceedings are limited proceedings in which the Immigration Judge considers applications for asylum, withholding of removal ("restriction on removal") under INA § 241(b)(3), and protection under the Convention Against Torture." *Id.* at (g).

8 C.F.R. § 1208.2(c)(3)(i) governs asylum-only proceedings. Other than the question of asylum, that is, "whether the alien is eligible for withholding or deferred removal," this subsection specifically "prohibit[s]" the parties from raising or considering "**any other issues**, including but not limited to issues of admissibility, deportability, eligibility for waivers, and eligibility for **any other form of relief**." *Id.* (emphasis added).

The statutory authority to detain a VWP Violator is found in 8 U.S.C. § 1187(c)(2)(E), not 8 U.S.C. § 1226. *See Matter of A-W-*, 25 I&N Dec. 45, 47-48, 2009 WL 8628885, at *3 (BIA 2009) ("Moreover, the statutory authority for the applicant's detention is contained in section 217(c)(2)(E) of the Act, 8 U.S.C.A. § 1187(c)(2)(E) (West Supp. 2008), not section 236 of the Act, 8 U.S.C. § 1226 (2006)."). Significantly, aliens denied relief in asylum-only proceedings, "can be removed without further process." *Bacuku v. Aviles*, No. 15-2543, 2016 WL 818894, at *5 (citing 8 C.F.R. § 217.2(c)(iv), 8 C.F.R. § 217.4(a)(1)). In *Bacuku*, the district court of New Jersey explained that "under the BIA's interpretation," the Immigration Judge's jurisdiction does not include custody redeterminations under 8 C.F.R. § 1236.1(d) in asylum-only proceedings. (*Id.*) (citation omitted). This is reflected in EOIR's Immigration Court's Policy Manual

Moreover, Immigration Judges do not have bond jurisdiction in certain limited proceedings, including asylum-only proceedings. *Id.* at (b)(3); 8 C.F.R. § 1208.2(c)(1)(iii), (iv). Specifically, "An alien subject to limited proceedings may be detained during the proceedings. Immigration Judges have no jurisdiction over custody decisions for these aliens." Policy Manual, 6.4 – Limited Proceedings, § (c) Custody in Limited Proceedings.

On February 24, 2026, Petitioner was issued a Notice of Intent to Issue a Final Administrative Removal Order, pursuant to 8 C.F.R. § 217.4(b)(1). (Dkt. 1, Pet. Attach. E, PageID #19, 40-41.) Petitioner was served with the Final Administrative Removal Order on May 11, 2026. Because the Petitioner has been issued a Final Administrative Order of Removal, which is not subject to judicial review, he is detained pursuant to 8 U.S.C. § 1231(a)(2).

8 C.F.R. § 217.4(b) ***Determination of deportability*** provides,

> (1) An alien who has been admitted to the United States under the provisions of section 217 of the Act and of this part who is determined by an immigration officer to be deportable from the United States under one or more of the grounds of deportability listed in section 237 of the Act shall be removed from the United States to his or her country of nationality or last residence. Such removal shall be determined by the district director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien who was admitted as a Visa Waiver Program visitor who applies for asylum in the United States must be issued a Form I-863 for a proceeding in accordance with 8 CFR § 208.2(c)(1) and (c)(2).
>
> (2) Removal by the district director under paragraph (b)(1) of this section is *equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.*

Petitioner is subject to detention pursuant to 8 U.S.C. § 1231(a)(2) because he has been issued a Final Administrative Removal Order, which started the 90-day removal period on May 11, 2026, when Petitioner was served. (Dkt. 1, Pet. Attach. E: VWP Removal Order, PageID # 40-41.) Indeed, pursuant to 8 U.S.C. § 1187(c)(2)(E), he waived any right to contest removal or release to participate in the VWP. (*Id.*) The VWP Removal Order is final and not subject to judicial review. (*Id.*); § 1231(a)(1)(B). As a result, he is subject to mandatory detention pursuant to 8 U.S.C. § 1231(a)(2); *see Nadaud v. Emerson*, No. 1:26-cv-658, 2026 WL 815816, at *2 (W.D. Mich. Mar. 25, 2026) (finding that a petitioner, who entered under the VWP and has a final order of removal, detention is governed by 8 U.S.C.§ 1231) (citing *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001));

Polizio v. Jenifer, 217 F. Supp. 2d 811, 815 (E.D. Mich. Aug. 1, 2002).

Moreover, the plain language of 8 U.S.C. § 1226 demonstrates that Petitioner is not eligible for bond under § 1226 because it only provides for release on bond for an alien (1) who is arrested on a "warrant issued by the Attorney General;" and (2) "detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Petitioner is not eligible for bond under § 1226(a) because he is not detained pending a decision on whether he is to be removed from the United States. That decision was made when he was ordered remove to the United Kingdom on May 11, 2026, pursuant to the Final Administrative Removal Order. The VWP Removal Order determined that he is a VWP violator and established "clear and convincing evidence that [he was] removable." (*Id.*)

The only remaining decision is whether or not the Immigration Judge will grant Petitioner asylum. A grant of asylum is not a removal decision. 8 U.S.C. § 1158(b) provides that asylum may be granted "to an alien who has applied for asylum . . . [if it is] determined that such alien is a refugee within the meaning of section 1101(a)(42)(A)." Section 1158(b) describes the factors in making the grant of asylum, which include eligibility, burden of proof, and credibility. (*Id.*) Significantly, establishing that an alien is a refugee for the grant of asylum has nothing to do with whether or not the alien is removable from the United States. Indeed, a grant of asylum will prevent an alien having been issued a final order of removal from being removed from the United States. §1158(c)(1)(A).

Should this Court not agree that Petitioner is under mandatory detention pursuant to 8 U.S.C. § 1231(a)(2), he will be soon, when the Immigration Judge makes a decision on his asylum application. Once there is a decision on the Petitioner's asylum application, the VWP Removal Order becomes final. *Nicusor-Remus v. Sessions*, 902 F.3d 895, 898 (9th Cir. 2018) ("[T]he denial

of an asylum application in asylum-only proceedings 'finalizes' DHS's removal order of a VWP entrant because the VWP entrant is entitled to no other forms of relief."); *see also Shehu v. Attorney Gen. of U.S.*, 482 F.3d 652, 656 (3d Cir. 2007); *Salomao v. Garland*, No. 20-1856, 2022 WL 1301773, at *3 (4th Cir. May 2, 2022). In other words, once Petitioner's "asylum-only proceedings are no longer ongoing, the VWP FARO in [his] case constitutes a final order of removal[,] Petitioner is subject to mandatory detention under 8 U.S.C. § 1231(a)(2)." *O'Connor v. Dir., U.S. Citizenship & Immigr. Servs.*, No. 25-CV-00947, 2025 WL 3855000, at *3 (W.D. Tex. Dec. 3, 2025), report and recommendation adopted sub nom. *O'Connor v. Warden, Karnes Cnty. Immigr. Processing Ctr.*, No. 25-CV-947, 2025 WL 3852955 (W.D. Tex. Dec. 30, 2025).

Petitioner's asylum-only proceedings are ongoing. Petitioner is scheduled for an individual merit hearing on the asylum application on May 28, 2026. As a result, he will either be granted asylum and released or removed to the United Kingdom. Therefore, this Court should deny the petition.

II. Due Process Does Not Require a Bond Hearing in this Case.

Petitioner's due process concerns do not rise to the level of requiring a bond hearing pursuant to 8 U.S.C. § 1226.[1] (Dkt. 1, Pet., PageID # 10.) Assuming jurisdiction exists, in *Demore v. Kim*, the Supreme Court "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process," and reaffirmed its "longstanding view

[1] This Court may not have jurisdiction to consider petitioner's due process claims. "Ordinarily, due to reciprocal-waiver requirement, federal courts lack jurisdiction over non-asylum based, due-process challenges to the removal of a VWP alien." *Lacy v. Gonzales*, 499 F.3d 514, 518 (6th Cir. 2007) (citing *Handa v. Clark*, 401 F.3d 1129, 1133-35 (9th Cir. 2005) ("When the government decides to remove a VWP alien, the alien has already waived the right to dispute or litigate the removal . . . . Requiring a hearing before an [immigration judge ('IJ')] would make little sense . . . ."); *Nose v. Att'y Gen.*, 993 F.2d 75, 80 & nn.9–10 (5th Cir. 1993) ("Because [8 U.S.C. § 1187(b)] unambiguously states that a [VWP] alien may only apply for asylum relief as a means of contesting deportation, we conclude that § 1187(b) forbids Nose from applying for other forms of relief from deportation.") (footnote omitted).").

that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings." 538 U.S. 510, 523, 526 (2003). The Court further explained that "when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal." *Id.* at 528. With respect to due process concerns, the Court recognized that it "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Id.* at 522.

Although the "Due Process Clause limits the detention of VWP entrants claiming asylum to a reasonable period of time . . . ," Petitioner's duration of detention is not unreasonable. *Malets v. Horton*, No. 4:20-cv01041, 2021 WL 11549981, at *7 (N.D. Ala. Jan. 11, 2021), report and recommendation adopted, No. 4:20-CV-01041, 2021 WL 4197594 (N.D. Ala. Sept. 15, 2021). Further, in immigration proceedings, the petitioner must demonstrate prejudice from an alleged constitutional violation. *Warner v. Ashcroft*, 381 F.3d 534, 539 (6th Cir. 2004); *see also Ramos Rafael v. Garland*, 15 F.4th 797, 801 (6th Cir. 2021); *Bradley v. Attorney General*, 603 F.3d 235, 240 (3d Cir. 2010) (due process challenges in VWP context challenging orders of removal require showing of substantial prejudice).

Petitioner's detention during in asylum-only proceedings, where his detention is less than 90 days, prevents him from stating a claim for relief under *Zadvydas v. Davis*, 533 U.S. 678 (2001). As this Court explained in *Lucero v. Field Off. Dir. of ICE Enf't and Removal Operations*, No. 1:25-cv-823, 2025 WL 3718730, at *6 (S.D. Ohio Dec. 23, 2025), "If the resulting detention were to become unreasonably long, due process concerns may emerge." *See also*, *Polizio*, 217 F. Supp.2d at 815 (finding that VWP participant's detention was not unreasonable). In *Polizio*, the petitioner was detained on February 14, 2002, and his petition for habeas relief was filed on May

8, 2002. *Id.* at 811, 815. Recognizing that petitioner's deportation was delayed due to his application for asylum and the court's order staying deportation, the court determined that Petitioner's detention did not violate due process. *Id.* at 815.

Petitioner's removability has been determined, as he was ordered removed on May 11, 2026. He is detained for the limited purpose of asylum-only proceedings. Petitioner is currently under mandatory detention pursuant to 8 U.S.C. § 1231(a)(2). Pursuant to *Zadvydas*, the length of Petitioner's detention is not unreasonable. Should the length of detention become an issue where there is no substantial likelihood of removal in the foreseeable future, Petitioner may file for habeas relief at that time. Accordingly, his due process claim fails as Congress chose to detain aliens pending removal proceedings and asylum-only proceedings.

Respondents respectfully move this Court for an Order dismissing the Petition for habeas relief.

Respectfully submitted,

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