

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

MANISHKUMAR PATEL,

Petitioner,

v.

PAMELA BONDI, Attorney
General of the United States, *et*
al.,
Respondents.¹

Case No. 3:25-cv-01104

(Chief Judge Matthew W. Brann)

RESPONSE TO PETITIONER'S HABEAS PETITION

This is a habeas petition filed on June 18, 2025, by Petitioner, MANISHKUMAR PATEL, an immigration detainee in the custody of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), housed at the Pike County Correctional Facility in Lords Valley, Pennsylvania. Doc. 1, Complaint for Declaratory

¹ “In habeas challenges to present physical confinement – ‘core challenges’ – the default rule is that the proper respondent is the warden of the facility where the prisoner is being held.” *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Petitioner requests release from confinement. See Doc. 1, Complaint for Declaratory and Injunctive Relief and Petition for Writ of Habeas Corpus, at 5-6. Thus, Warden Lowe is the only proper respondent, and the rest of the Respondents should be dismissed.

and Injunctive Relief and Petition for Writ of Habeas Corpus,² at 3. Specifically, Patel requests the Court grant his Petition and order his release upon payment of a reasonable bond. *Id.* at 5-6. On July 18, 2025, this Court entered an Order directing Respondent to respond to the Petition within seven days, or on or before July 25, 2025. Doc. 5, Order to Show Cause. This Response is filed in accordance with that Order.

FACTS

Patel is a native and citizen of India. Exhibit 1, I-213-Record of Deportable/Inadmissible Alien, at 2; Exhibit 2, Notice to Appear, at 2. *See also* Doc. 1 at 4, ¶ 1. He entered the United States through the southern border with Mexico in 1995. Exhibit 1 at 3; Exhibit 2 at 2. *See also* Exhibit 3, Declaration of Acting Supervisory Detention and Deportation Officer Paul Wiss, at 1, ¶ 2; Doc. 1 at 4, ¶ 7. Since that time, Patel has not adjusted his status.

On August 24, 2008, ICE Enforcement and Removal Operations (ERO) came into contact with Patel during a routine transportation check at a bus station in Rochester, New York. Exhibit 1 at 2; Exhibit 3 at 1, ¶

² Petitioner's Petition lacks page numbers; therefore, any reference to the Petition relates to the ECF assigned page number.

2. That same day, ICE served Patel with a Notice to Appear. Exhibit 2 at 3. The Notice to Appear charged Patel as removable pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), in that he was a noncitizen³ present in the United States without being admitted or paroled. *Id.* at 2. Patel was released on bond on September 3, 2008. Exhibit 3 at 1, ¶ 3.

On January 4, 2010, the Honorable Thomas Janas, United States Immigration Judge, ordered Patel removed to India. Exhibit 4, Order of the Immigration Judge dated January 4, 2010, at 1; *see also* Exhibit 5, Board of Immigration Appeals' (BIA) decision dated November 23, 2010, at 7-35. Judge Janas denied Patel's applications for asylum, withholding of removal, cancellation of removal, and relief under the Convention Against Torture (CAT). Exhibit 5 at 7-35. More specifically, Judge Janas found that Patel, without corroboration for his testimony, was unable to meet the burden to establish asylum, withholding, or CAT relief, *id.* at 21, and Patel was further barred from obtaining asylum because his application was untimely. *Id.* at 21-23.

³ The INA employs the term "alien," defined as "any person not a citizen or national of the United States." 8 U.S.C. § 1101(a)(3). Herein, "noncitizen" means any person as defined in 8 U.S.C. § 1101(a)(3).

On November 23, 2010, the BIA issued a decision dismissing Patel's appeal. *Id.* at 3-6. The BIA affirmed Judge Janas's finding that Patel's asylum application was untimely, and he did not warrant a waiver of the bar, *id.* at 3-4, and it also affirmed Judge Janas's findings that Patel failed to meet his burden of proof regarding asylum, withholding of removal, and CAT relief. *Id.* at 4-6.

The United States Court of Appeals for the Sixth Circuit dismissed Patel's Petition for Review on June 21, 2012. *See Patel v. Holder*, 481 Fed.Appx. 992 (6th Cir. 2012). The Sixth Circuit found that it lacked jurisdiction to review the BIA's discretionary refusal to grant Patel a waiver of the asylum application time requirement, *id.* at 994-95, and the Attorney General's discretionary decision to deny his application for cancellation of removal. *Id.* at 995. The Sixth Circuit was further unwilling to overrule the BIA's finding that Patel did not meet his burden with respect to his applications for withholding of removal and relief under CAT. *Id.* at 995-96.

During the pendency of Patel's Petition for Review, he filed an I-485, Application to Register Permanent Residence or Adjust Status, and an I-360, Petition for Amerasian, Widow(er), or Special Immigrant.

Exhibit 3 at 2, ¶ 9. On October 24, 2024, United States Citizenship and Immigration Services (USCIS) denied the I-360 application, *id.* at 2, ¶ 10, and USCIS subsequently denied Patel's appeal. *Id.* at 2, ¶ 11. Patel's I-485 application remains pending. *Id.* at 2, ¶ 12.

On June 23, 2025, Patel filed a Motion to Reopen with the BIA. Exhibit 6, Patel's Motion to Reopen. On July 17, 2025, the BIA denied Patel's motion to reopen as untimely. *See* Exhibit 7, BIA Decision dated July 17, 2025. Specifically, the BIA found that Patel did not file the motion to reopen within the 90-day time limit, and he did not qualify for an exception to that rule. *Id.* at 3-4.

In order to facilitate removal, ICE ERO arrested Patel on May 28, 2025. *Id.* at 2, ¶ 13. He has been detained at Pike County Correctional Facility since that time. *See* Doc. 1 at 4, ¶¶ 1, 3.

As noted in the Declaration of Deportation Officer Paul Wiss, ICE ERO has been working to obtain a travel document from India in order to effectuate Patel's removal. Exhibit 3 at 2, ¶ 16.

ARGUMENT

The Court should deny Patel's Petition because he is lawfully detained under 8 U.S.C. § 1231(a), and he is not entitled to a bond

hearing. More specifically, Patel's removal to India is reasonably foreseeable.

I. Patel will be removed in the reasonably foreseeable future.

Under section 241 of the INA, ICE is permitted to detain a noncitizen for ninety (90) days (the removal period) following the latest of three dates: (1) "the date the order of removal becomes administratively final"; (2) if removal is stayed pending judicial review of the removal order, "the date of the [reviewing] court's final order"; or (3) "the date the alien is released from [criminal] detention or confinement." 8 U.S.C. § 1231(a)(1)(A), (B). Constitutionally, ICE is afforded more time to effectuate removal. In *Zadvydas v. Davis*, the United States Supreme Court recognized six (6) months as a "presumptively reasonable period" of post-final order detention. 533 U.S. 678, 700-01 (2001). A noncitizen detained beyond the six (6) month presumptive period may show that there is no reasonable likelihood that he will be removed in the "reasonably foreseeable future." *Id.* at 701. If the noncitizen meets this burden and makes such a showing, the burden then shifts to the government to show that there is a likelihood of deportation in the "reasonably foreseeable future." *Id.*

In this case, the removal period commenced once the Sixth Circuit denied Patel's appeal on June 12, 2012. *See Patel*, 481 Fed.Appx. at 992. *See also Manishkumar Patel v. Eric Holder, Jr., et al.*, No. 10-4516, Doc. 28-1 (6th Cir. Mar. 17, 2011) (granting Patel's motion for a stay of removal); 8 U.S.C. § 1231(a)(1)(B). Obviously, the removal period expired years before the Petitioner was taken into custody. To date, Patel has been detained for fifty-eight (58) days. *See* Exhibit 3 at 2, ¶ 13; Doc. 1 at 4, ¶¶ 1, 3. However, Patel is unable to demonstrate that he will not be removed within the reasonably foreseeable future.

Patel must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Here, Patel does not suggest that he will not be removed in the reasonably foreseeable future. Rather, Patel indicates that detention will make it difficult to pursue his applications of asylum, withholding of removal, or protection under CAT. *See* Doc. 1 at 4-5, ¶ 8. But these issues have been previously litigated and resolved, and the BIA recently denied the Petitioner's motion to reopen. *See* Exhibits 4-7; *see also See Patel*, 481 Fed.Appx. at 992. Without good reason, the burden cannot shift to the Government to justify continued detainment. *See also*

Pierre v. Dep't of Homeland Sec., 2013 WL 4083777, at *5 (M.D. Pa. Aug. 13, 2013) (Caldwell, J.) (denying petition where petitioner offered no evidence to carry his burden that he would not be removed in the reasonably foreseeable future). Notwithstanding the lack of evidence, Patel will be removed within the reasonably foreseeable future.

ICE is in the process of obtaining travel documents for Patel to be removed to India. *See* Exhibit 3 at 2, ¶ 16. ICE ERO and the Indian Government regularly cooperate in removal proceedings. Last year, ICE successfully removed 1,529 noncitizens to India. *See U.S. Immigration and Customs Enforcement Fiscal Year 2024 Annual Report* available at <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> (last accessed July 25, 2025). As such, his removal is reasonably foreseeable.

II. Patel will receive all required due process protections.

In *Johnson v. Artega-Martienz*, 596 U.S. 573 (2022), the United States Supreme Court abrogated the United States Court of Appeal for the Third Circuit's decision in *Guerrero-Sanchez v. Warden York County Prison*, 905 F.3d 208 (3d Cir. 2018). Relying on the principals of *Zadvydas*, where the Supreme Court adopted a presumption that noncitizens could be reasonably detained without a hearing for six

months, the Third Circuit adopted a six-month rule for aliens detained under § 1231(a)(6). *Guerrero-Sanchez*, 905 F.3d at 220. In *Artega-Martinez*, the Supreme Court found that there was “no plausible construction of the text of § 1231(a)(6) that requires the Government to provide bond hearings before immigration judges after six months of detention.” 596 U.S. at 581.

In order to address due process concerns for prolonged detainment, however, ICE officials conduct administrative custody reviews for individuals in detention. Here, ICE would conduct an administrative custody review at 90-days, and a panel at ICE headquarters would conduct a subsequent review at 180-days. To the extent Patel remains confined for a further duration, which is unlikely given the longstanding cooperation between the United States and India regarding removals, he will receive additional reviews. *Artega-Martinez*, 596 U.S. at 583.

Conclusion

Due to the aforementioned reasons, the Court should deny Patel's habeas petition.

Respectfully submitted,

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Dated: July 25, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on July 25, 2025, she served a copy of the attached

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by electronic service pursuant to Local Rule 5.7 and Standing Order 05-6, & 12.2 to the following individual(s):

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/s/ Maureen Yeager
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