UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-cv-03167-ECT-DJF

Dipakkumar Baldevbhai Patel,

Plaintiff,

v.

Kristi Noem, Secretary, U.S. Department of Homeland Security; and Mike Stasko, Jail Administrator, Freeborn County Jail, Minnesota,

Defendants.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

This habeas petition brought by Petitioner Dipak-Kumar Baldevbhai Patel[1] should be dismissed for multiple reasons. Petitioner improperly tries to combine various requests for relief in a single case, but the Court has construed the matter as a request for habeas corpus relief and provided for a response deadline accordingly. Therefore, while the petition in its prayer for relief does not even seek release from custody, in fact that is the only form of relief properly under consideration.

Both habeas and mandamus—the other main remedy sought—are extraordinary forms of relief that may only be requested where no other avenue for relief is available. Attempting to mix them together in a single cause of action is inappropriate, and in any event Petitioner fails to establish entitlement to either one.

Petitioner's main argument for release from custody seems to be that he applied for

[1] Some official records reflect Petitioner as having a first name Patel and last name Dipak-Kumar.

protection under the so-called U-visa program, and that USCIS supposedly has yet to adjudicate that application. Patel believes that, while it remains pending, this particular kind of immigration-benefit application immunizes him from removal. But a week before this case was filed, Judge Provinzino squarely rejected a closely parallel argument in the *Mendoza Mendez* case, finding the Court lacked jurisdiction over that habeas petition and dismissing the matter.

Anyhow, USCIS here already rendered its initial determination, finding that Petitioner's application was *not* "bona fide," thus eliminating the core basis for Petitioner's habeas claim. Even were that not so, Petitioner's arguments would fail on their merits.

For these and other reasons explained below, the Court should dismiss the habeas petition.

BACKGROUND

I. Statutory and Regulatory Background

A. The U-Visa Program

Congress created the U visa program in 2000 to help crime victims by granting status to aliens who assist criminal investigations and prosecutions. Victims of Trafficking and Violence Protection Act of 2000 ("VTVPA"), Pub. L. 106–386, § 1513(a)(2), 114 Stat. 1464, 1533–34 (Oct. 28, 2020) (codified at 8 U.S.C. §§ 1101(a)(15)(U), 1184(a)(1)). An individual is eligible for U-1 nonimmigrant status if he can show he: (1) has suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime; (2) has credible or reliable information about the crime, and has been, is being, or is likely to be helpful to law enforcement in investigating or

prosecuting the crime; and (3) is admissible to the United States or has had all grounds of inadmissibility waived. *See* 8 U.S.C. §§ 1101(a)(15)(U), 1182(a); 8 C.F.R. §§ 214.1(a)(3)(i), 214.14(c)(2)(iv). If the United States Citizenship & Immigration Service (USCIS) approves the petitioner's U visa petition and the petitioner is in the United States, the petitioner will receive lawful U-1 nonimmigrant status and employment authorization for up to four years, renewable. *See* 8 U.S.C. § 1184(p)(6).

Congress later enacted the Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA"), Pub. L. 109-162, 119 Stat. 2960 (Jan 5, 2006). That statute directed the Secretary of the Department of Homeland Security to promulgate regulations that implemented, among other things, section 1513 of the VTVPA. Pub. L. 109-162, § 828, 119 Stat. 3066. DHS published an Interim Rule, effective October 17, 2007, giving USCIS sole jurisdiction over U visa petitions. *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53,014 (Sept. 17, 2007) (codified at 8 C.F.R. § 214.14).

B. Applying for a U Visa

An individual seeking U nonimmigrant status submits a Form I-918 to USCIS. 8 C.F.R. §§ 214.14(c)(1), (f)(2). A petitioner may pursue a U visa, like any other visa, while outside the United States. *See* U.S. Citizenship & Immig. Servs., *Victims of Criminal Activity: U Nonimmigrant Status*, https://www.uscis.gov/hum-anitarian/victims-of-criminal-activity-u-nonimmigrant-status (last visited August 27, 2025).

An approvable U visa petition is one that meets all the criteria to be granted U nonimmigrant status. The petitioner must submit a certification from a "Federal, State, or

local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity," and the certification must state the petitioner "has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution." 8 U.S.C. § 1184(p)(1). The petitioner must also be admissible to the United States or receive a waiver of all grounds of inadmissibility. *Id.* §§ 1182(a), (d)(3)(A)(ii), (d)(14); 8 C.F.R. §§ 212.17, 214.1(a)(3)(i).

C. The U-Visa Waitlist

Congress limited the program to just 10,000 available U visas per year. 8 U.S.C. § 1184(p)(2). Expecting that some applicants might need to wait for approval, Congress allowed the DHS Secretary to "grant work authorization" for aliens with "a pending, bona fide application" for a U visa. *Id.* § 1184(p)(6).

USCIS created a waiting list for eligible petitioners whose application is not granted "due solely to the cap" on the number of available U visas. 8 C.F.R. § 214.14(d)(2). "USCIS will grant deferred action or parole," including work authorization, "to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list." 8 C.F.R. § 214.14(d)(2).

"Deferred action" is "an act of administrative convenience to the government that gives some cases lower priority" for removal. 8 C.F.R. § 274a.12(c)(14). In the preamble to the 2007 rulemaking, which created the U visa regulations in 8 C.F.R. § 214.14, stays of removal were distinguished from deferred action:

> A stay of deportation or removal is an administrative decision to stop temporarily the deportation or removal of an alien who has been ordered deported or removed from the United States. See 8 CFR 241.6; 8 CFR

> 1241.6. *Deferred action is an exercise of prosecutorial discretion that defers the removal of the alien based on the alien's case being made a lower priority for removal.* Immigration and Customs Enforcement, Department of Homeland Security, Detention and Deportation Officer's Field Manual, ch. 20.8 (2005). *Deferred action does not confer any immigration status upon an alien.*

72 Fed. Reg. 53014, 53016 n.3 (Sept. 17, 2007) (emphasis added).

While deferred action does not provide immigrant or nonimmigrant status, an individual with deferred action does not accrue unlawful presence in the United States during the deferred action period. 8 C.F.R. § 214.14(d)(3). "However, a petitioner may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS." *Id.*

D. Bona Fide Determination (BFD)

USCIS established a procedure in 2021, known as the "BFD" process, for identifying bona fide applications and providing employment authorization documents to pending U visa petitioners within the United States who merit a favorable exercise of discretion. *See* U.S. Citizenship & Immig. Servs. Policy Manual, Vol. 3, Part C, Ch. 5, https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited on August 27, 2025). "USCIS generally does not conduct waiting list adjudications for aliens to whom USCIS grants BFD EADs and deferred action," and the BFD process therefore operates as an alternative waiting list process allowing U visa applicants within the United States to obtain work authorization and deferred action without a full waiting list adjudication. *Id.*, Ch. 6, https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6 (last visited August 27, 2025).

But the deferred action offered by the process does not begin with a bona fide determination—it is contemporaneous with the period of employment authorization. As the USCIS Policy Manual explains, "If USCIS grants the alien a Bona Fide Determination Employment Authorization Document (BFD EAD) as a result of the BFD process, USCIS then also exercises its discretion to grant that alien deferred action for the period of the BFD EAD." *Id.*, Ch. 5, https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited August 27, 2025). The BFD notice itself explains that the applicant's "period of deferred action will begin on the date [the] employment authorization begins." Pet. Ex. A at 2.

II. Petitioner Patel's Immigration Proceedings

This is a situation of recent re-arrest to effectuate an old but still-valid removal order. Petitioner Dipakkumar Baldevabhai Patel is a citizen and national of India. Declaration of Deportation Officer John Ligon ("Ligon Decl.") ¶ 4; Declaration of David Fuller ("Fuller Decl.") Ex. B, G. Patel claimed to have entered the United States on or about November 24, 2010, near El Cenizo, Texas. Ligon Decl. ¶ 4. On the same date, the U.S. Border Patrol arrested Patel and transported him to Laredo, Texas, for processing. *Id.*

On November 26, 2010, Border Patrol issued Patel an expedited removal order to India. Ligon Decl. ¶ 5; Fuller Decl. Ex. A. Shortly thereafter, Patel claimed fear or returning to India and his case was referred to an Asylum Officer. Ligon Decl. ¶ 6. On December 20, 2010, an Asylum Officer conducted a credible fear interview with Patel. *Id.* ¶ 7.

The Asylum Officer issued Patel a negative credible fear finding on December 28, 2010 and Patel requested an Immigration Judge review of the decision. Ligon Decl. ¶ 8; Fuller Decl. Ex. C-D. On January 12, 2011, an Immigration Judge affirmed the Asylum Officer's negative credible fear finding. Ligon Decl. ¶ 9; Fuller Decl. Ex. E.

ICE's Enforcement and Removal Operations group ("ERO") submitted a travel document request for Patel on February 1, 2011. Ligon Decl. ¶ 10. On April 19, 2011, Patel posted bond and was released from ICE custody. *Id.* ¶ 11.

ERO then received a travel document for Patel on July 20, 2012. Ligon Decl. ¶ 12. The next month ERO therefore mailed an I-340, Notice to Obligor to Deliver Alien, to Patel's obligor with instructions for Patel to present himself to report to Houston ERO on August 16, 2012. *Id.* ¶ 13. Patel failed to report, and on the same date ERO Houston initiated a breach of Patel's bond. *Id.*

On August 24, 2012, ERO mailed a G-56, Call in Letter to Patel to report to ERO Houston; Patel once again failed to report. Ligon Decl. ¶ 14.

ERO's Bond Management Unit initiated a Motion to Rescind Patel's bond breach in early 2013 due to a lack of service of required paperwork. Ligon Decl. ¶ 15. On March 2, 2013, ERO cancelled Patel's bond. *Id.* ¶ 16.

On July 30, 2025, ERO St. Paul arrested Patel in Hudson, WI. Ligon Decl. ¶ 17; Fuller Decl. Ex. G. He has remained in immigration custody since that time for the purpose of effectuating his removal to India.

On August 11, 2025, ERO St. Paul submitted a travel document request to the Consulate General of India in Chicago, IL, which is currently pending. Ligon Decl. ¶ 18.

The Consulate General of India previously issued a travel document for Patel in 2012, *id.*, and ERO St. Paul believes there is a significant likelihood of Patel's removal in the foreseeable future; that office has conducted removals to India within the past month. *Id.* ¶ 19.

ARGUMENT

While this is styled a habeas action, the petition emphasizes mandamus instead. Petitioner discusses at length his pending application with USCIS for protection under the U-visa program, suggesting that application means he cannot be removed. But the Court lacks jurisdiction to review the decision to effect Patel's removal by re-arresting him in July 2025, and likewise lacks jurisdiction over his pending U-visa application, as Judge Provinzino ruled in her August 1, 2025 decision in *Domingo Mendoza Mendez v. Shea*, 25-cv-2830 (LMP/ECW), Doc. 24 (D. Minn. Aug. 1, 2025). This Court should conclude likewise, especially since here Petitioner has received an *unfavorable* BFD whereas the habeas petitioner in *Mendoza Mendez* had received a favorable BFD.

All that remains, then, is a threadbare *Zadvydas*-based habeas argument, and Petitioner fails on that front because he alleges no basis on which to conclude no significant likelihood exists of his removal to India in the reasonably foreseeable future. Petitioner thus cannot make out a prima facia case for a due-process violation under applicable Supreme Court precedent, but even if he had, the record evidence amply rebuts it. The petition should be denied.

I. The Court lacks jurisdiction to hear Petitioner's claim arising from the government's execution of his removal order under § 1252(g).

Judicial review of immigration matters is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999) ("[J]udicial deference to the Executive Branch is especially appropriate in the immigration context . . . ."); *see also Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("[T]he power over aliens is of a political character and therefore subject only to narrow judicial review."). That is especially true of claims arising from aliens' arrest, detention, and removal because Congress removed district courts' power to adjudicate cases "arising from" those decisions and orders:

> Except as provided in this section and notwithstanding any other provision of law, (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). The "sole and exclusive means for judicial review" of such decisions is by "a petition for review filed with an appropriate court of appeals." *Id.* § 1252(a)(5).

The Supreme Court has explained that § 1252(g) divests the district courts of jurisdiction over "three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* removal proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). The Eighth Circuit expounded on the scope of § 1252(g) in *Silva v. United States*: "A claim that is 'connected directly and immediately' to a decision to execute a removal order arises from that decision." 866 F.3d 938, 940 (8th Cir. 2017)

(quoting *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 943 (5th Cir. 1999)). "So long as the claim arises from a decision to execute a removal order, there is no jurisdiction." *Id.*

Petitioner's claim arises from the decision to execute his removal order, falling squarely within the plain text of § 1252(g)'s jurisdictional bar. His contention that he is entitled to "deferred action" on his final order of removal plainly seeks a court order stopping the execution of his removal order. *See* Pet. ¶ 61 (alleging "ICE is prohibited from removing Petitioner under the law"); *id.* ¶ 67. The Court cannot, consistent with § 1252(g), order ICE to defer action on a valid order of removal.

Courts all over the country—in this district and elsewhere—have applied § 1252(g), refusing to restrain removals of U-visa petitioners while their applications are pending. *E.g. Lara-Saavedra v. Sessions*, No. 18-cv-2989 (MJD/LIB), 2019 WL 572656 at *2 (D. Minn. Feb. 12, 2019) (applying § 1252(g) and denying petitioner's motion for a TRO restraining his removal while his U visa application was pending); *Rodriguez-Sosa v. Whitaker*, No. 18-cv-3261 (PAM/KMM), 2018 WL 6727068, at *2 (D. Minn. Dec. 21, 2018) (applying § 1252(g) and denying motion for TRO against removal of petitioner with "deferred action" while on U visa waitlist); *Velasco Gomez v. Scott*, No. C25-0522, 2025 WL 1726465, at *4-5 (W.D. Wash. June 20, 2025) (applying § 1252(g) and denying motion for PI staying removal of petitioner with "deferred action" after receiving a bona fide decision employment authorization document); *Madrid v. Miller*, No. 25-cv-3114, 2025 WL 1531712, at *2 (D. Neb. May 29, 2025) (applying § 1252 and denying interim relief from removal to U visa applicant with a bona fide determination).

Likewise, earlier this month Judge Provinzino concluded no jurisdiction exists over a habeas petition that sought relief based on the fact that USCIS had rendered a favorable bona fide determination (BFD) as to a pending U-visa application. *Mendoza Mendez*, No. 25-cv-2830, Doc. 24, at 21 (D. Minn. Aug. 1, 2025) (court "lacks jurisdiction to review" Secretary's "exercise of her discretion to execute [petitioner's] removal order"). This Court should reach the same conclusion and dismiss the case for lack of jurisdiction.

Petitioner resists this conclusion. First, he maintains § 1252(g) must be read narrowly. Pet. ¶ 9 (citing *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)). But the Court need not determine § 1252(g)'s scope on a clean slate: the Eighth Circuit in *Silva* resolved questions about § 1252(g)'s scope and rejected arguments like Petitioner's that would limit § 1252 to discretionary decisions. Section 1252(g) "makes no distinction between discretionary and nondiscretionary decisions. So long as the claim arises from a decision to execute a removal order, there is no jurisdiction." *Silva*, 866 F.3d at 940. The *Silva* court affirmed a district court's conclusion that it had no jurisdiction to restrain removal, even though "the execution of th[e] removal order happened to be in violation of a stay[.]" *Id.* Although ambiguous, Petitioner appears to make a similar claim here, asserting throughout the petition that his current removal proceedings are somehow precluded by the pendency of his U-visa application, *see, e.g.,* Petition ¶ 41, and he seeks a judgment preventing his removal. The Court is bound by *Silva* to conclude it has no jurisdiction under § 1252(g). *See* 866 F.3d at 940.

Second, Petitioner attempts to characterize his claim as something other than a challenge to the execution of his removal order, asserting instead he is challenging "the

unlawful conduct of DHS in unlawfully arresting, and detaining Petitioner contrary to his grant of deferred action under the U visa Program[.]" Pet. ¶ 10. That again runs afoul of the Eighth Circuit's ruling in *Silva*. Section 1252(g) bars claims "arising from the decision or action" to "execute removal orders." 8 U.S.C. § 1252(g). That jurisdictional prohibition, the Eighth Circuit explained, applies to any decision or action that is "connected directly and immediately" to the execution of a removal order. *Silva*, 866 F.3d at 940. That includes Petitioner's arrest and detention for the purpose of executing the removal order.

Arresting and detaining an alien for the purpose of executing a removal order is "connected directly and immediately" to executing the removal. The Supreme Court has recognized repeatedly that arresting and detaining an individual with a final order of removal is a necessary part of executing a removal order. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."). ICE arrested and detained Petitioner for the purpose of executing the final order of removal, and the arrest and detention are a necessary part of the removal. As such, Petitioner's challenge to the arrest and detention "arise from" the decision to execute his removal order, and § 1252(g) applies. *Silva*, 866 F.3d at 940. Any other conclusion would allow clever petitioners to thwart their removals by challenging every incidental act necessary to bring it about, rendering § 1252(g) meaningless.

Petitioner cannot avoid the jurisdictional bar in § 1252(g). The Court should therefore dismiss the petition.

II. Petitioner's BFD-related claim fails on the merits.

Even if the Court had jurisdiction, Petitioner's theory is unsupported by the facts or the law and must fail on the merits. His petition relies on three false premises: first, that USCIS has not yet issued a BFD; second, that a favorable bona fide determination would give rise to immediate "deferred action"; and third, that deferred action would render Petitioner unremovable in any event. These contentions are belied by the plain text of the regulations and the facts of this case.

A. USCIS has made its bona fide determination (BFD).

The habeas petition repeatedly states that USCIS has not made any determination as to the bona fide status of Petitioner's U-visa application. But in fact USCIS sent correspondence to both Patel and his counsel on July 25, 2025, announcing its conclusion that "the evidence *does not demonstrate* your petition for U nonimmigrant status is bona fide." Fuller Decl. Ex. F (emphasis added). As a result, the agency stated Patel "will also not be considered for deferred action or employment authorization at this time." *Id.* The reason noted had to do with "deficiencies in [Patel's] petition or the evidence submitted in support of [the] petition," and separate correspondence was referenced. *Id.* This indicates USCIS has already reached the threshold BFD conclusion, rendering much of

Patel's petition—particularly the portions referencing a supposed need for mandamus relief—moot and doubly irrelevant.

B. Petitioner's U-visa application does not confer deferred action.

Petitioner's claim further fails on its face because he would not be in deferred action status even had USCIS reached a different BFD conclusion or (as alleged) not made that decision yet. Rather, deferred action status begins only when employment authorization begins.

As the USCIS Policy Manual explains, deferred action status exists "for the period of the BFD EAD"—the employment authorization document. USCIS Policy Manual, Vol. 3, Part C, Ch. 5, available at https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited on August 27, 2025). Petitioner has no employment authorization, much less deferred action status, given that USCIS made a negative BFD finding on July 25, 2025. Fuller Decl. Ex. F.

Even if Petitioner did have deferred action status, that would not overcome his removability. A district court in Texas recently addressed this precise issue in an illegal-reentry prosecution. *United States v. Davila-Hernandez*, --- F.Supp.3d ----, 2025 WL 1909582, at *1 (S.D. Tex. July 8, 2025). The defendant moved to dismiss the criminal complaint against him, arguing that USCIS's bona fide determination notice authorized his legal presence in the United States and defeated probable cause. *Id.* The court rejected that assertion, concluding "the issuance of a BFD, alone, does not confer some sort of lawful status to be or remain in the United States. The very BFD correspondence relied

on by Defendant disclaims the conferral of status and only invites him to request formal authorization." *Id.* at *3. Petitioner's claim would fail for the same reason, even were it not for the unfavorable BFD correspondence he fails to mention in his petition. *See also Mendoza Mendez*, Case No. 25-cv-2830, Doc. 24, at 21 (D. Minn. Aug. 1, 2025).

Petitioner therefore cannot support a core premise of his claim—that he has been granted deferred action, or that the theoretical possibility of his becoming eligible for it otherwise undermines removal proceedings.

C. Deferred action would not stay execution of a final order of removal in any event.

Petitioner's merits argument next goes awry by conflating "deferred action" with a stay of removal. The regulations and the case law show the two benefits are different. Even if Petitioner had deferred action status, that status would not supersede his final order of removal.

"Deferred action" is not a stay of removal. It is "a form of prosecutorial discretion whereby the Department of Homeland Security declines to pursue the removal of a person unlawfully present in the United States." *Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957, 967 (9th Cir. 2017) (amended op.); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999). The regulations similarly define deferred action as "an act of administrative convenience to the government that gives some cases lower priority" for removal. 8 C.F.R. § 274a.12(c)(14); *see also* 72 Fed. Reg. 53014, 53016 n.3 (Sept. 17, 2007) (same).

The INA's text shows that Congress considered "deferred action" a benefit distinct

from a stay of removal. As the Ninth Circuit explained in *Arizona Dream Act Coalition*, "For example, . . . 8 U.S.C. § 1227(d)(2) allows an alien who has been denied an administrative stay of removal to apply for deferred action." 855 F.3d at 967. The regulations make clear that "a petition for U-1 nonimmigrant status"—bona fide or not—"has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal[.]" 8 C.F.R. § 214.14(c)(1)(ii). And while deferred action does not equate to lawful status, an individual with deferred action does not accrue unlawful presence in the United States during the deferred action period. 8 C.F.R. § 214.14(d)(3). "However, a petitioner may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS." *Id.*

At least one court recently agreed that a grant of BFD deferred action is not synonymous with a stay of removal. *Raghav v. Jaddou*, No. 2:25-cv-00408, 2025 WL 373638, at *2 (E.D. Cal. Feb. 3, 2025). In that undue-delay case, the district court denied the plaintiff's motion for a TRO restraining his removal because the plaintiff was unlikely to succeed in showing that the allegedly delayed bona fide determination would prevent his removal. *Id.* ("Plaintiff obtaining a BFD in his favor would not prevent his removal."). This case requires the same result.

Petitioner's BFD notice, even if it had equated to deferred action status, would not prevent his removal. His claim challenging his arrest, detention, and removal on that basis must therefore be dismissed.

III. Petitioner's remaining habeas argument also fails on the merits.

Looking beyond Petitioner's improper mandamus argument, his more straightforward argument for release from detention also falls short. Patel seeks this relief under 28 U.S.C. § 2241, which gives district courts jurisdiction to hear habeas petitions brought by individuals in federal custody. As the petitioner, Patel bears the burden of proving he is in custody in violation of the Constitution or the laws of the United States. The Supreme Court has "underscore[d] the limited scope of inquiry into immigration legislation" and "repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (cleaned up).

These limitations are important in habeas actions that challenge civil immigration detention. Federal courts employ a narrow standard of review and exercise "the greatest caution" in evaluating constitutional claims that implicate those decisions. *Mathews v. Diaz*, 426 U.S. 67, 81-82 (1976). The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be

vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.").

Patel's challenge in this case is to his detention pending removal. Pet. ¶¶ 7, 19.[2] He contends that ICE's decision to re-detain him violates the Due Process Clause because there is no significant likelihood of his removal in the foreseeable future. Pet. ¶ 61. That is a *Zadvydas* claim, the framework for which Respondents will outline below. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). The Supreme Court recognizes the government's compelling interest in "assuring [an] alien's presence at the moment of removal." *Id.* at 699.

It also bears re-emphasis that Patel cannot use this petition to challenge the validity of his underlying removal order. Jurisdiction over that type of challenge lies with an immigration court in the first instance, and then with the appropriate federal court of appeals. *See* 8 U.S.C. § 1252; *Tostado v. Carlson*, 481 F.3d 1012, 1014 (8th Cir. 2007); *see also* Argument Section I, *supra*.

A. Legal and statutory authority for detention pending removal

ICE has the authority to detain Patel pending his removal from the United States. For more than two centuries, immigration officials have had the authority to charge aliens as removable from the country, arrest them subject to removal, and detain them during

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[2] Patel also invokes the Administrative Procedure Act. *See* Pet. ¶¶ 7, 11, 19. But this is a habeas action and not an APA case. Habeas petitioners are limited to challenging the fact or duration of their confinement. *Spencer v. Haynes*, 774 F.3d 467, 469-71 (8th Cir. 2014); *Kruger v. Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996). Thus, the Court lacks habeas jurisdiction over Patel's improper request for judicial review under the APA.

removal proceedings. *See Abel v. United States*, 362 U.S. 217, 233 (1960). Through the Immigration and Nationality Act ("INA"), Congress enacted a multi-layered statutory scheme for civil detention pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, and 1231. Once an alien is subject to a final removal order—as Patel is here—detention is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. part 241.

An individual who has been ordered removed lacks a legal right to remain in the United States, and his liberty interest in remaining in the country is reduced. Accordingly, federal law provides that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days" and "shall detain the alien" during the removal period. 8 U.S.C. § 1231(a)(1)(A) and (a)(2)(A).[3] The "removal period" is the period during which the Department of Homeland Security begins to take steps to execute the final removal order. *See id.* § 1231(a)(1)(A)-(B). That period begins on the latest of: (1) the "date the order of removal becomes administratively final"; (2) "[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 (3) "[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).

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[3] Although § 1231 and other provisions of the INA refer to the "Attorney General," the Homeland Security Act of 2002 transferred many immigration enforcement and administrative functions to the Secretary of Homeland Security. *See* Pub. L. No. 107-296, 116 Stat. 2135 (2002).

Detention during the 90-day removal period can be extended in some circumstances. For example, individuals who are removable after being convicted of an aggravated felony may be detained beyond 90 days. *Id.* § 1231(a)(6); *see also id.* § 1231(a)(1)(C) (suspension of removal period based on failure to make timely application for travel documents or attempts to prevent removal). The Department of Homeland Security also conducts periodic post-order custody reviews to determine whether an individual subject to a final removal order should continue to be detained beyond the removal period. *See* 8 C.F.R. § 241.4 (addressing continued detention for inadmissible, criminal, and other aliens).

After the removal period expires, release may occur under an order of supervision. *See* 8 C.F.R. § 241.13. Specifically, an individual held beyond the removal period can seek release from 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." *Id.* § 241.13(a). However, the Department of Homeland Security can revoke release "if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." *Id.* § 241.13(i)(2). The procedures for revocation are set out in a federal regulation, which requires that the alien:

> be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future . . . . The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

Id. § 241.13(i)(3). After re-detention using these procedures, § 241.4 governs the continued detention pending removal. *Id.* § 241.13(i)(2).

B. Petitioner's *Zadvydas* Challenge

Apart from its improper request for mandamus, the main thrust of Patel's habeas petition is that his continued detention violates 8 U.S.C. § 1231, as the Supreme Court has construed the statute under the Due Process Clause. This is Patel's *Zadvydas* challenge.

Although the plain language of § 1231(a)(6) imposes no limit on the length of detention pending removal, the Supreme Court in *Zadvydas* "read an implicit limitation into" the statute. 533 U.S. at 689. Thus, a person subject to a final order of removal cannot be detained indefinitely. *Id.* at 699-700. *Zadvydas* established a temporal marker: detention for six months or less is presumptively constitutional. *Id.* at 701. But continued detention does not automatically become unconstitutional after six months; longer detention still comports with due process if there is a "significant likelihood of removal in the reasonably foreseeable future." *Id.* As the Supreme Court explained:

> [a]fter this 6-month period, once the alien 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. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. *This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.*

Id. (emphasis added). The end result is that a habeas petitioner must meet the initial burden of demonstrating no significant likelihood of his removal in the reasonably foreseeable future. *Id.* If he makes this showing, then the government must rebut it. *Id.*

C. Premature challenge

Patel's *Zadvydas* claim is premature for two reasons. First, he has not yet been re-detained for more than 90 days, and Section 1231(a) provides for mandatory detention during a 90-day removal period.

Second, and related, Patel identifies no authority for combining his 2010-11 detention (which lasted around five months) with his 2025 re-detention to get over *Zadvydas*'s six-month mark. As things stand, Patel's current detention is presumptively constitutional because it has lasted well short of six months.

Federal district courts have recently confronted these issues and refused to combine periods of detention that were years apart. Take for example *Ghamelian v. Baker*, where a Maryland federal court considered a habeas "[p]etitioner's argument that because the 90-day statutory removal period plus a consecutive additional three-month period expired many years ago, [he] cannot be subject to further detention under § 1231(a)(6)." 2025 WL 2049981, *4; 2025 U.S. Dist. LEXIS 139238, at *11 (D. Md. July 22, 2025). The court rejected this argument, emphasizing that "*Zadvydas* did not (1) address a situation where an alien was released and then re-detained or (2) purport to create some sort of limitations period for § 1231(a)(6) detention." *Id.*

A different federal court reached the same conclusion in *Barrios v. Ripa*, dismissing a *Zadvydas* claim as premature where the petitioner's re-detention had not yet lasted even

a month. 2025 WL 2280485, *8; 2025 U.S. Dist. LEXIS 153228, at *21 (S.D. Fla. Aug. 8, 2025). The *Barrios* court recognized the dangers of letting habeas petitioners combine periods of detention: "if the Court counted detentions in the aggregate, any subsequent period of detention, even one day, would raise constitutional concerns. And adjudicating the constitutionality of every re-detention would obstruct an area that is in the discretion of the Attorney General—effectuating removals." *Id.*; *see also Meskini v. AG of the United States*, 2018 WL 1321576, *3; 2018 U.S. Dist. LEXIS 42058, at *13 (M.D. Ga. Mar. 14, 2018) (concluding that *Zadvydas* is not "a permanent 'Get Out of Jail Free Card' that may be redeemed at any time just because an alien was detained too long in the past"). The same concerns are present here.

Patel's failure to confront these issues and properly support his petition is reason enough to reject his request for habeas relief as premature. "[D]etainees awaiting removal from the United States may not file anticipatory habeas petitions prior to the six-month period having elapsed just in case their detention goes on for too long; instead, they must wait until the presumptively reasonable six-month period has passed to seek habeas relief." *Brian B. v. Tollefson*, 2024 WL 4029657, *1; 2024 U.S. Dist. LEXIS 158854, at *4 (D. Minn. July 26, 2024), *adopted by* 2024 WL 4026259; 2024 U.S. Dist. LEXIS 157487 (D. Minn. Sep. 3, 2024). The Court can deny Patel's habeas petition on this basis alone.

D. No due-process violation

The Court should also deny Patel's habeas petition because there is no due process violation in this case. Patel cannot make the initial showing required at step one of the *Zadvydas* analysis.

Patel fails to satisfy the threshold requirement that he "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. The petition on this point simply includes a conclusory assertion that wrongly places the initial burden on the agency and unjustifiably states "ICE is prohibited from removing Petitioner under the law." Pet. ¶ 61. Yet even were the Court to combine Patel's periods of detention, his argument is one this Court has long rejected. "The mere passage of time, including concomitant delays in obtaining travel documents, is not alone sufficient to show that no such likelihood exists unless the delays are so extraordinarily long as to trigger an inference that travel documents will likely never issue at all." *Joseph K. v. Berg*, 2019 WL 13254377, *2; 2019 U.S. Dist. LEXIS 248455, at *6 (D. Minn. Mar. 15, 2019) (citations and internal quotation marks omitted), *adopted by* 2019 WL 13254378; 2019 U.S. Dist. LEXIS 248456 (D. Minn. May 3, 2019). Because Patel cannot make the threshold showing under *Zadvydas*, the Court should deny his habeas petition.

Patel fares no better at the second step of the *Zadvydas* analysis. The record evidence rebuts any notion that there is no significant likelihood of his removal to India in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701. In general, courts have found no significant likelihood of removal under *Zadvydas* in five circumstances:

1. where the detainee is stateless, and no country will accept him;
2. where the detainee's country of origin refuses to issue a travel document;
3. where there is no repatriation agreement between the detainee's native country and the United States;

4. where political conditions in the country of origin render removal virtually impossible; and

5. where a foreign country's delay in issuing travel documents is so extraordinarily long that the delay itself warrants an inference that the documents will likely never issue.

Joseph K., 2019 WL 13254377, *3; 2019 U.S. Dist. LEXIS 248455, at *8-9 (citations omitted). Patel's petition does not allege that any of these circumstances are present. ICE very recently submitted a travel-document request to the Consulate General of India in Chicago, and awaits a response. Ligon Decl. ¶ 18. No evidence exists showing that a travel document will be difficult to obtain or that ICE will have any trouble returning Petitioner to India per his removal order. In fact, the local ICE office has recently conducted removals to India and believes there is a significant likelihood of Patel's removal in the foreseeable future. *Id.* ¶ 19. Accordingly, even had Patel made a prima facie showing, it is rebutted in the record.

CONCLUSION

The Court should deny the petition for writ of habeas corpus and dismiss the action with prejudice.

Dated: August 27, 2025

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