UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-cv-24635-KMM

HASMUKHBHAI SHANTILAL PATEL,

Petitioner,

v.

KRISTI NOEM, Secretary, Department of Homeland Security, *et al.*,[1]

Respondents.
_____/

RESPONDENTS' RETURN AND MEMORANDUM OF LAW TO PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Respondents, Kristi Noem, Secretary of the Department of Homeland Security ("DHS"), *et al.*, (collectively "Respondents"), by and through the undersigned Assistant United States Attorney, and in accordance with this Court's Order to Show Cause [ECF No. 6], respectfully submit this Return and Memorandum of Law in response to Petitioner Hasmukhbhai Shantilal Patel's ("Petitioner") *pro se* Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 [ECF No. 1], as follows:

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[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 U.S.C. § 2243. In cases where a "habeas challenges a form of 'custody' other than present physical confinement, [the petitioner] may name as respondent the entity or person who exercises legal control with respect to the challenged 'custody.'" *Rumsfeld v. Padilla*, 542 U.S. 426, 438 (2004). In cases, however, involving present physical confinement, the Supreme Court has reaffirmed that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Id.* at 439.

Petitioner is detained at the Krome Service Processing Center, an ICE detention facility in Miami, Florida. Petitioner's immediate custodian is Charles Parra, Assistant Field Office Director (AFOD), at the Krome Service Processing Center. Accordingly, the proper respondent in the instant case is AFOD Parra in his official capacity, and the remaining respondents should be dismissed as parties to the instant action.

INTRODUCTION

Proceeding *pro se*, Petitioner commenced this action on October 7, 2025, by filing a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 in which he alleges that he has been unlawfully detained in Immigration and Customs Enforcement ("ICE") custody for an indefinite amount of time. ECF No. 1 ¶ 6 ("I've been ordered removed for over 180 days and yet still have no idea when removal will be carried out or if it will be carried out [sic]."), ¶ 13 ("I was ordered removed [sic] in May of 2025 and have been waiting ever since to no avail, I do believe the government will be able to remove me in the foreseeable [sic] future.")). As relief, Petitioner seeks "immediate release until the government is able to safely remove [him]." *Id.* ¶ 15, *Request for Relief.*

The Court should deny the Petition as premature. Petitioner is lawfully detained under 8 U.S.C. § 1231(a)(1)(B), pursuant to an order of removal that became final on November 1, 2025. Therefore, *neither* the statutory removal period of 90 days under 8 U.S.C. § 1231(a)(1), *nor* the presumptively reasonable detention period of 180 days under *Zadydas v. Davis*, 533 U.S. 678 (2001), has lapsed. Consequently, the Court lacks jurisdiction to review the Petition and the Petition should be dismissed with prejudice.

BACKGROUND

I. Petitioner's Immigration History and Detention.

Petitioner Hasmukhbhai Shantilal Patel, is a native and citizen of India. *See* Exhibit A, Record of Deportable/Inadmissible Alien ("I-213"). On July 12, 2013, Petitioner was admitted to the United States as a B2 nonimmigrant visitor for pleasure with authorization to remain for a temporary period not to exceed January 11, 2014. *Id.* Petitioner remained in the United States

beyond January 11, 2014, without permission from the U.S. Department of Homeland Security. *Id.*

On July 22, 2024, Petitioner filed a Form I-130, Petition for Alien Relative, which remains pending. *See id.*; *see also* Exhibit B ¶ 8, Declaration of Deportation Officer Jason J. Clarke. On February 4, 2025, Petitioner was encountered by Immigration and Customs Enforcement, Enforcement and Removal Operations ("ERO"), at the Orange County Jail following his arrest for Trespassing, a municipal ordinance violation. *See* Exhibit A, I-213; *see also* Exhibit B ¶ 9; Exhibit C, Judgment and Monetary Obligation Sentence. Thereafter, ERO lodged a detainer with the Orange County Jail. *See* Exhibit A, I-213; *see also* Exhibit B ¶ 9.

On March 20, 2025, Petitioner was taken into immigration custody and placed in removal proceedings via the issuance of a Notice to Appear ("NTA"). *See id.* ¶ 10; *see also* Exhibit D, EARM Detention History; Exhibit E, NTA. Thereafter, Petitioner requested review of this custody determination by an immigration judge. *See* Exhibit F, Notice of Custody Determination, Form I-286. On March 31, 2025, the immigration judge issued an order taking no action on Petitioner's request. *See* Exhibit G, Order of the Immigration Judge dated March 31, 2025 ("Bond Order").

On May 5, 2025, the immigration judge issued an order finding Petitioner removable from the United States as charged in the NTA, and in lieu of removal, granting his application for voluntary departure under safeguards pursuant to INA § 240B(a), (8 U.S.C. § 1229c). *See* Exhibit H, Order of the Immigration Judge dated May 5, 2025 ("Voluntary Departure Order"); *see also* Exhibit B ¶ 11. The grant of voluntary departure required Petitioner to depart ". . . without expense to the Government, on or before 06/04/2025, or any extensions as may be granted by the Department of Homeland Security (DHS), and under any other conditions DHS may direct." *Id.* The order further provided that if the above conditions were not met or if Petitioner failed to depart

as required, the grant of voluntary departure "shall be withdrawn without further notice or proceedings" and an order of removal to India would become effective immediately. *Id.* Petitioner waived appeal of all issues. *Id.*

On July 20, 2025, ERO granted Petitioner an extension of time to depart the United States, until September 1, 2025. *See* id. ¶ 12; *see also* Exhibit I, Voluntary Departure and Verification of Departure, Form I-210. On October 10, 2025, ERO granted Petitioner another extension of time to depart the United States, until November 1, 2025. *See* Exhibit B ¶ 13; *see also* Exhibit J, Voluntary Departure and Verification of Departure, Form I-210, dated October 10, 2025. On October 27, 2025, ERO received travel documents for Petitioner from the consulate of India. *See* Exhibit B ¶ 14. On the same date, Petitioner advised ERO that he did not have the funds to purchase his own return ticket to India. *Id.*

Petitioner's authorized period of voluntary departure expired on November 1, 2025, at which point he became subject to an administratively final removal order and detention pursuant to INA § 241. *See id.* ¶ 16; *see also* Exhibit H, Voluntary Departure Order (requiring Petitioner to depart at no expense to the government).

Petitioner is currently detained under the authority of 8 U.S.C. § 1231(a)(1)(B) at Krome North Service Processing Center in Miami, Florida ("Krome"), pending his departure. *See* Exhibit D, EARM Detention History. Petitioner's removal from the United States is imminent. *See* Exhibit B ¶ 16.

APPLICABLE LEGAL STANDARD

I. Legal Standard for 28 U.S.C. § 2241.

A district court may grant a writ of habeas corpus to any person who demonstrates he is in custody in violation of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3). The

right to challenge the legality of a person's confinement through a petition for a writ of habeas corpus extends to those persons challenging the lawfulness of immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S. 510, 517 (2003). "Petitioner 'bears the burden of proving that he is being held contrary to law; and because the habeas proceeding is civil in nature, he must satisfy his burden of proof by a preponderance of the evidence.'" *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)); *Bradin v. United States Prob. and Pretrial Servs.*, No. 22-cv-3032, 2022 U.S. Dist. LEXIS 72062, 2022 WL 1154622, at *3 (D. Kan. Apr. 19, 2022) (citing cases discussing burden of proof in a habeas case under § 2241).

ARGUMENT

I. The Court is Without Jurisdiction to Review the Habeas Petition, Since the Challenge to Post-Order Custody is Premature.

Section 1231 (a) of Title 8, United States Code governs the detention and removal of aliens ordered removed and governs the issue Petitioner raises in this case. That statute provides that "when an alien is ordered removed," ICE *shall* detain and "remove the alien from the United States within a period of 90 days (referred to as the "removal period")." 8 U.S.C. § 1231(a)(1)(A) (emphasis added). The statute further provides that the removal period begins on the latest of the following:

> (i) The date the order of removal becomes administratively final.
>
> (ii) If 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.
>
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

See 8 U.S.C. § 1231(a)(1)(B). During this 90-day period, ICE must detain the noncitizen, *see* 8 U.S.C. § 1231(a)(2), and certain noncitizens may be detained beyond the original 90-day period. *See* 8 U.S.C. § 1231(a)(6); *Zadvydas*, 533 U.S. 678.

Specifically, *Zadvydas* provides that ICE may continue to detain a noncitizen under a final order of removal for an additional three months—a presumptively reasonable detention period of 180 days. *See Zadvydas*, 533 U.S. at 701. After the conclusion of this 180-day removal period, a noncitizen in ICE custody may challenge his continued detention in habeas corpus proceedings on the ground that there is no significant likelihood that his removal will occur in the reasonably foreseeable future. *See id.* In other words, the 180 days in post-order custody must have expired before an individual can challenge custody under 8 U.S.C. § 1231. And in *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit found that in order to state a claim under *Zadvydas*, "the alien not only must show *post removal order detention in excess of six months*, but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 287 F.3d at 1052 (emphasis added).

Here, the removal period began on November 1, 2025, when the time within which Petitioner was required to voluntary depart the United States expired and he did not depart. *See* Ex. H at 1 (providing that if conditions of voluntary removal are not met, the order of removal entered pursuant to 8 C.F.R. § 1240.26(d) becomes effective immediately); *see also* Ex. J ("Notice: The Immigration Judge's Alternate Order of Removal will take effect if the alien does not depart within the time specified."); 8 C.F.R. § 1240.26. Thus, under *Zadvydas*, the 180-day removal period does not expire until April 30, 2026.

However, Petitioner commenced this action nearly a month *prior* to the order of removal becoming final. *See* ECF No. 1, filed October 7, 2025. And as of the date of this filing, Petitioner

has been in post-order custody for a mere *twelve* days. Further, as noted above, ERO has received travel documents from the Consulate of India, and his removal from the United States is imminent. *See* Exhibit B ¶¶ 14, 16. Under these facts, petitioner cannot show that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009) (quotation marks omitted); *see also Akinwale*, 287 F.3d at 1052 ("[I]n order to state a claim under *Zadvydas* the alien ... must show post-removal order detention in excess of six months [and] also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future."). Accordingly, pursuant to *Zadvydas* and *Akinwale*, this habeas action is premature and should be dismissed.

CONCLUSION

For all the foregoing reasons, the Court should deny the Petition with prejudice.

Dated: November 12, 2025

Respectfully submitted,

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