

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 26-20599-CIV-ALTMAN

HARDIKKUMAR VASUDEVBHAI PATEL,

Petitioner,

v.

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

Respondents.

RESPONSE TO ORDER

Respondents, Kristi Noem, Secretary, Department of Homeland Security, *et al.*,¹ hereby respond to the Court's Order requiring an explanation of why the Petition for Habeas Corpus filed by Petitioner Hardikkumar Vasudevbhai Patel should not be granted.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Petitioner, Hardikkumar Vasudevbhai Patel, is a native and citizen of India. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien (Form I-213), dated August 3, 2022. Petitioner entered the United States on or about January 5, 2007, as a student with an F1 Visa.

¹ A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Krome North Service Processing Center. *See* Petition at ¶ 3. The only appropriate respondent named is Assistant Field Officer Director Charles Parra. All other respondents should be dismissed.

See Exh. B, Declaration. On September 4, 2012, Petitioner became a Lawful Permanent Resident based on a relative petition filed by his spouse. *See* Exh. B, Declaration.

On April 14, 2020, Petitioner was arrested for Traveling to Meet a Minor, in violation of Florida Statute 847.0135(4)(a) and Unlawful Sexual Activity with a Minor, in violation of Florida Statute 794.05(1). *See* Exh. C, Judgement and Sentence, Case No. [REDACTED]

On February 17, 2022, Petitioner took a plea and was ultimately convicted of Attempted Sexual Activity with a Minor, in violation of Florida Statute 777.04(4d). *See* Exh. C, Judgement and Sentence, Case No. [REDACTED]. Petitioner was sentenced to nine months'

imprisonment, followed by three years of probation, in addition to being a registered sexual offender, having no contact with victim and family, and paying court costs. *See* Exh. C, Judgement and Sentence, Case No. [REDACTED]

On August 3, 2022, U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) encountered the Petitioner during a probation check in and issued a warrant for his arrest. *See* Exh. A, Form I-213, dated August 3, 2022; *see also* Exh. D, Form I-200 dated August 3, 2022; *see also* Exh. E, Form I-286, Notice of Custody Determination, dated August 3, 2022. On August 3, 2022, ICE ERO also issued the Petitioner a Notice to Appear (NTA), charging him with inadmissibility under U.S.C. § 1227(a)(2)(E)(i), in that he is an alien who at any time after entry has been convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment. *See* Exh. F, Form I-862, Notice to Appear ("NTA"), dated August 3, 2022. On August 3, 2022, Petitioner was taken into custody and transferred to Krome North Service Processing Center on August 4, 2022. *See* Exh. G, Detention History. The NTA was filed with the Executive Office for Immigration Review (EOIR) on August 8, 2022. *See* Exh. B, Declaration.

On August 9, 2022, Petitioner requested a custody redetermination hearing and on August 17, 2022, the Immigration Judge issued an order stating “no action.” *See* Exh. H, Immigration Judge Order, dated August 17, 2022. Petitioner requested another custody redetermination hearing and on August 23, 2022, the Immigration Judge issued an order stating “no action.” *See* Exh. I, Immigration Judge Order, dated August 23, 2022. Petitioner requested another custody redetermination hearing and on August 29, 2022, the Immigration Judge issued an order granting a \$5,000.00 bond. *See* Exh. J, Immigration Judge Order, dated August 29, 2022. On August 30, 2022, Petitioner posted bond and was released. *See* Exh. G, Detention History. Petitioner is a registered sex offender as of April 18, 2024. *See* Exh. B, Declaration.

On August 18, 2025, at the conclusion of the merits hearing before the EOIR Orlando Immigration Court, the Immigration Judge denied the Petitioner’s application for Cancellation of Removal and ordered him removed to India. *See* Exh. K, Immigration Judge Order, dated August 18, 2025. Petitioner reserved appeal and filed an appeal with the Board of Immigration Appeals (BIA). *See* Exh. K, Immigration Judge Order, dated August 18, 2025; *see also* Exh. L, BIA Briefing Schedule, dated February 2, 2026. To date, the appeal remains pending with the BIA. *See* Exh. B, Declaration.

On October 20, 2025, ICE ERO issued a warrant for arrest of Petitioner. *See* Exh. M, Form I-200, Warrant for Arrest of Alien, dated October 20, 2025. On October 23, 2025, ICE ERO encountered the Petitioner and took him into custody. *See* Exh. B, Declaration; *see also* Exh. G, Detention History.

Since his arrest on October 23, 2025, Petitioner has not requested a custody redetermination hearing before EOIR. *See* Exh. B, Declaration. The Petitioner is currently detained at Krome North Service Processing Center. *See* Exh. G, Detention History.

In his Petition for a Writ of Habeas Corpus, Petitioner argues that his detention violates his constitutional due process rights (Count I) and 8 U.S.C. § 1231(a) because his removal cannot be effectuated in the foreseeable future (Count II). He asks the Court to order his immediate release from ICE custody. As demonstrated below, DHS properly revoked Petitioner's bond and his detention is lawful.

ARGUMENT

I. Petitioner's detention is lawful.

Petitioner is detained pursuant to Section 236(a) of the INA. Section 236 of the INA, codified at 8 U.S.C. § 1226, provides DHS² the authority to arrest and detain an alien pending a decision on whether the alien is to be removed. 8 U.S.C. § 1226(a). The statute allows DHS to release the alien on bond or conditional parole. *See* 8 U.S.C. § 1226(a)(2).

Where a detained alien detained under 8 U.S.C. § 1226(a) requests a custody redetermination, at the resulting individualized bond hearing, the immigration judge must determine whether the petitioner's release would endanger other persons or property and whether he is likely to appear for future proceedings. A petitioner bears the burden to establish that he does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight. *See Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). An alien who presents a danger to persons or property should not be released during the pendency of removal proceedings. *See Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994). To determine if a petitioner

² Although the statute and regulations refer to the "Attorney General," these references should, in light of the Homeland Security Act of 2002, be read as references to the Secretary of Homeland Security. *See* Homeland Security Act § 471, 6 U.S.C. § 291 (abolishing the former Immigration and Naturalization Service); *id.* § 441, 6 U.S.C. § 251 (transferring immigration enforcement functions from the Department of Justice to the Department of Homeland Security); 8 U.S.C. § 1103(a)(1) ("The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens").

poses a danger to the community or a flight risk, an immigration judge may consider the petitioner's "stable employment history, the length of residence in the community, the existence of family ties," *Matter of Andrade*, 19 I. & N. Dec. 488, 489 (B.I.A.1987), and any "criminal record, including ... the recency of such activity." *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A.2006). *See generally Matter of Urena*, 25 I. & N. Dec. 140 (B.I.A.2009). A petitioner may appeal the immigration judge's determination to the Board of Immigration Appeals, the appellate administrative body with jurisdiction over the matter. *See* 8 C.F.R. § 1236.1(d)(3)(i); *see also* 8 C.F.R. § 1003.38. In this case, Petitioner sought and was granted release on bond by an Immigration Judge in 2022.

As is relevant to this case, 8 U.S.C. § 1226(b), allows DHS to revoke a bond or parole "at any time" and re-arrest the alien. *See* 8 U.S.C. § 1226(b). ICE need not provide advance notice of its intent and return to the Immigration Court to revoke the bond.. *See Matter of Sugay*, 17 I. & N. Dec. 637 (B.I.A. 1981). ICE has authority to revoke an alien's bond when a change in circumstances weighs against release on bond. For example, in *Matter of Sugay*, 17 I. & N. Dec. 637 (B.I.A. 1981), an alien's bond was revoked after information elicited at a deportation hearing justified revocation of the alien's bond. The BIA rejected the alien's argument that the district director was without authority to revoke bond after a bond redetermination hearing. *Id.* at 639. The court concluded that the alien still had recourse to "other administrative authority for release from custody" under the then controlling provision. *Id.* The court found persuasive that the "newly developed evidence brought out at the deportation hearing" (which included fleeing a murder conviction in his origin country, criminal activity in the United States, and weak ties) represented a "considerable change in circumstances" justifying the director's decision. *Id.*

As in *Sugay*, there was a material change here between the time Petitioner was released on bond in 2022, and the revocation of his bond in October of 2025. Specifically, the Immigration Judge presiding over Petitioner's removal proceedings denied Petitioner's application for cancellation of removal, thus materially altering Petitioner's prospects of avoiding removal and increasing significantly the risk of flight. *See, e.g., Matter of Siniauskas*, 27 I&N Dec. 207, 209 (BIA 2018) (citing *Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987) (finding that an alien's eligibility for relief may serve as incentive—or disincentive—to appear).

Petitioner was not without recourse to challenge DHS's decision to revoke his bond and rearrest him. Under 8 C.F.R. § 1003.19, Petitioner could have sought an Immigration Judge's review of DHS's decision. *See id.* (“(e) After an initial bond redetermination, an alien's request for a subsequent bond redetermination shall be made in writing and shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination.”) Petitioner, however, did not seek bond redetermination. In that regard, Petitioner has failed to exhaust administrative remedies, as required prior to seeking habeas relief.

II. Habeas Relief is Unavailable Because Petitioner Did not Exhaust Administrative Remedies

A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement “aims to provide the agency with a chance to correct its own errors, ‘protect[] the authority of administrative agencies,’ and otherwise conserve judicial resources by ‘limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.” *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.). Accordingly, the Petition should be dismissed for failure to exhaust administrative remedies.

But even if Petitioner had exhausted his remedies, 8 U.S.C. § 1226(e) prohibits judicial review of DHS's discretionary judgment on detention. That subsection provides:

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

8 U.S.C. § 1226(e). The plain language of 8 U.S.C. § 1226(e) provides that a discretionary judgment to detain an alien or to release on bond may not be reviewed by the courts.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition.

Respectfully submitted.
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