UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-00891-MJD-DTS

JAIME ALBERTO DURAN BELTRAN,

Petitioner,

v.

DAVID EASTERWOOD, *et al.*,

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Jaime Alberto Duran Beltran, filed this habeas petition to seek release from detention by the U.S. Immigration and Customs Enforcement ("ICE") pending his removal from the country. Respondents Kristi Noem, Todd M. Lyons, and David Easterwood (collectively, the "Federal Respondents") submit this response and respectfully request that the Court deny Beltran's petition because he is not entitled to habeas relief. Beltran's removal to El Salvador is likely to occur in the foreseeable future, which disposes of his main claims in this case. To the extent Beltran can also raise a habeas challenge to the procedures ICE used when revoking his release, none of those challenges have merit, or necessitate release, and Petitioner fails to adequately address any alleged deficiencies. Bottom line, Petitioner has a valid final order of removal, his grant of deferred action is a purely discretionary status, and he thus can be removed at any point.

BACKGROUND

The Federal Respondents draw the following background from information included in Beltran's Petition ("Pet.").

I. Beltran's Background and Removal Proceedings

Jaime Beltran is a citizen of El Salvador who entered the United States in July 2015. He was initially detained by the Department of Homeland Security ("DHS") upon entry to the United States. Pet. ¶ 4 He was processed under 8 USC 1229(a) for removal proceedings and removed or provided with voluntary departure and returned to El Salvador. Jaime then re-entered the United States in August of 2015 without inspection or admission, where he has remained since. *Id.* Jaime's application for a U visa, the origin of his Deferred Action claim, comes from his wife, who was the victim of an assault in 2018 in Minnesota. Pet. ¶ 5. The gist of Jaime's claim is that the grant of deferred action he received, pursuant to his U Visa application, renders him unremovable. Pet. ¶ 8.

II. Procedural History

Beltran filed this action on January 30, 2026, seeking relief under 28 U.S.C. § 2241. Dkt. 1. His Petition breaks down into two main lines of argument, First, that ICE will not be able to remove him in the foreseeable future, so his ongoing detention violates the Due Process Clause—i.e., he is raising a *Zadvydas* issue. Pet. ¶¶ 45, 49-50. Secondarily, and enmeshed with this is his assertion that his grant of deferred action precludes his removal Pet. ¶ 46.

ARGUMENT

I. Jurisdiction, Burden of Proof, and Scope of Review

Beltran seeks 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, he bears the burden of proving that he is in custody in violation of the Constitution or the laws of the United States. Judicial review is narrow in immigration matters, including challenges to immigration detention. *See I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *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."). 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) (citations and internal quotation marks omitted).

These limitations are important in habeas actions that challenge a noncitizen's 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.").

Beltran's challenge in this case is to his detention pending removal. 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, given his grant of deferred action, and alleged procedural due process violations. Pet. ¶ 45-50. That is a *Zadvydas* claim, the framework for which the Federal Respondents will outline below. *See Zadvydas v. Davis*, 533 U.S. 678 (2001).

It is also worth emphasizing that Beltran cannot use this petition to challenge the validity of his underlying removal order or ICE's execution of that 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).

II. Legal and Statutory Authority for Detention Pending Removal

ICE has the authority to detain Beltran pending his removal from the United States. For more than two centuries, immigration officials have had the authority to charge noncitizens as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during 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 the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See* 8 U.S.C. §§ 1225, 1226, and 1231. Once a noncitizen is subject to a final removal order—as Beltran is here—his detention is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. part 241.

A noncitizen 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).[1] The "removal period" is the period during which the Department of Homeland Security begins to take steps to execute the noncitizen's 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).

[1] The Homeland Security Act of 2002 transferred many immigration enforcement and administrative functions from the Attorney General 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, noncitizens like Beltran 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 when noncitizen fails to make timely application for travel documents or acts to prevent removal). The Department of Homeland Security also conducts periodic post-order custody reviews to determine whether a noncitizen 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 noncitizens).

After the removal period expires, a noncitizen may be released under an order of supervision. *See* 8 C.F.R. § 241.13. Specifically, a noncitizen 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 noncitizen:

> 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 a noncitizen is re-detained using these procedures, § 241.4 governs his continued detention pending removal. *Id.* § 241.13(i)(2).

III. Beltran's Challenge to his Detention

Beltran's habeas petition challenges his continued detention on substantive grounds (Claim I) and on procedural grounds (Claim II, III). Pet. ¶¶ 82-91. Both claims fail. As explained below, **Beltran's detention comports with Due Process because there is a substantial likelihood that he will be removed to El Salvador in the reasonably foreseeable future**. That is all the Supreme Court requires. *See Zadvydas*, 533 U.S. at 689 ("[P]ost-removal-period detention [is limited] to a period reasonably necessary to bring about that alien's removal from the United States."). The Court should therefore deny this petition in its entirety. Beltran's argument concerning the

A. Beltran's *Zadvydas* Challenge

Beltran contends that his continued detention violates the Due Process Clause. This is better known as a *Zadvydas* challenge. Although the plain language of § 1231(a)(6) does not impose any limit on how long a noncitizen can be detained 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.*

1. No Due Process Violation

Beltran's *Zadvydas* challenge fails on the merits because there is no due process violation in this case. Beltran cannot make the initial showing required at step one of the *Zadvydas* analysis.

At step one, Beltran 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 is noticeably thin on this point,

relying almost entirely on the fact that his grant of deferred action emanating from his wife's U-visa application, and his derived claim. Pet. ¶¶ 45-50.

Beltran's current detention serves a clear purpose by "assuring [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. The Supreme Court long ago recognized that detention to facilitate removal is a legitimate governmental objective. *See Wong Wing*, 163 U.S. at 235 ("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."). Likewise, Beltran's detention has a definitive endpoint: his removal to El Salvador. He has currently been detained for less than a month while ICE works to facilitate that removal, and "[t]he 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." *Yongdi Chen v. Banieke*, 2015 U.S. Dist. LEXIS 105145, at *11 (D. Minn. July 14, 2015), *adopted by* 2015 U.S. Dist. LEXIS 104914 (D. Minn. Aug. 11, 2015). For these reasons, the Federal Respondents have rebutted any presumption Beltran raised (or tried to raise) regarding the likelihood of his removal in the reasonably foreseeable future.

Because the constitutional due process standards set forth in *Zadvydas* are satisfied in this case, Beltran is not entitled to habeas relief. The specific parameters and the deficiencies of his deferred action argument will be outlined in the following paragraph. As the Court will see, this Grant of Deferred Action is not equivalent to status of any sort, and as the Petitioner explicitly concedes, is revocable.

2. Petitioner's Pending U-Visa Application Does Not Impact His Detention or Removal Proceedings; His Order of Final Removal Controls.

Petitioner incorrectly alleges that his pending U-Visa application, and grant of deferred action impedes Respondents' ability to potentially remove him, thus creating a Zadyvas issue. Petition. ¶ 45-50. As Judge Provinzino recently explained that **deferred action is an exercise of prosecutorial discretion**. *Id.* at 5 n.5. Slip Op., *Domingo M.M. v. Shea, et al.*, No. 25-cv-2830 (LMP/ECW) (D. Minn. August 1, 2025) (ECF 24). This Court should decline to follow this red herring argument.

A. The U-Visa Program

Congress created the U visa program in 2000 to help crime victims by granting status to noncitizens 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)). *See generally* Slip Op., *Domingo M.M. v. Shea, et al.*, No. 25-cv-2830 (LMP/ECW) (D. Minn. August 1, 2025) (ECF 24). 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 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 he is outside the United States. *See* U.S. Citizenship & Immig. Servs., *Victims of Criminal Activity: U Nonimmigrant Status*, https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status (last visited December 2, 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 noncitizens 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

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 December 2, 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 to the 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 December 2, 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 on December 2, 2025).

CONCLUSION

The Federal Respondents respectfully request that the Court deny Beltran's habeas petition in its entirety. The previous grant of deferred action does not create a Zadvydas issue, and he is subject to a final order of removal. No evidentiary hearing is necessary in this matter because the submissions filed with this response provide a sufficient record upon which the Court can adjudicate the petition.

Dated: February 2, 2026

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