UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 24-cv-01393-SRN-LIB

WALTER A.,

Petitioner,

v.

NOEM, et al,

Respondents.

FEDERAL RESPONDENTS' CLOSING ARGUMENT

Petitioner Walter A. is an alien held in civil immigration detention who brings this Petition alleging that his detention pursuant to § 8 U.S.C. § 1231(a)(6) has become unreasonably long, thereby violating his rights under the Fifth Amendment's Due Process Clause. Because Petitioner has not established that his detention violates his due process rights pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001), and for the additional reasons set forth below, the Court should deny the Petition.

Setting aside the motion for contempt, which Federal Respondents have cured, and the temporary restraining order, which is no longer necessary to rule on as the Court is bound to rule on the limited relief of a writ of habeas corpus, this case presents a single, discrete legal issue: whether a significant likelihood of removal exists. Based on the evidence presented to the Court, the answer is emphatically yes.

STATEMENT OF THE RELEVANT FACTS

The material facts are not in dispute. Federal Respondents dispute those facts reviewed by the Court at the start of the evidentiary hearing, especially those involving

Petitioner's claimed harm in his home country and in the United States. As identified by Federal Respondents, Petitioner was able to present such facts at his asylum claim before an Immigration Judge, who denied relief, in part because the Judge found Petitioner not credible. Regardless, such facts are unnecessary for the Court's decision in this case.

Petitioner is a citizen and national of Guatemala, who unlawfully entered the United States at an unknown location on an unknown date without inspection or parole..[1]

On June 23, 2024, DHS Immigration and Customs Enforcement (ICE) officers encountered Petitioner at the Minnehaha County Jail during routine ICE Criminal Apprehension Program operations. On June 24, a Warrant for Arrest of Alien (I-200) was issued. ICE arrested Petitioner after his release from the custody of Minnehaha County Jail. Petitioner was then transported to the ICE office in Sioux Falls, SD for processing. ICE then issued Petitioner a Notice to Appear (Form I-862), charging him under § 212(a)(6)(A)(i) of the INA, as amended, for being an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. An Immigration Officer also made an initial determination that Petitioner was ineligible for bond.

On October 31, before an Immigration Judge and under oath, Petitioner admitted and conceded the allegations and charge of removability, Immigration Judge found Petitioner removable as charged and denied Petitioner's bond request.

[1] Petitioner states that he unlawfully entered on March 20, 2020 in his Form I-589 Application for Asylum and Withholding of removal filed with the Immigration Court, A No. 215 812 947). DHS has no information to affirm or refute such claim.

On October 14, 2025,[2] the Immigration Judge held an individual merits hearing on Petitioner's asylum application. The Immigration Judge denied relief and ordered Petitioner removed to Guatemala. Petitioners did not timely appeal, rendering such a final administrative removal order.[3] On November 28, Petitioner moved to reopen removal proceedings and stay of removal with the Immigration Judge. On December 1, the Immigration Judge denied both the motion to reopen and the stay of removal; Petitioner appealed the same, which remains pending.

Since the final removal order was entered, Federal Respondents have prepared to remove Petitioner. As ICE Deportation Officer Will Robinson testified at the evidentiary hearings in this case, Guatemala is part of a group of countries in South America that will accept deportees with a valid passport, which Petitioner currently possesses. DO Robinson also testified that it would take approximately "10 minutes" to put together a removal packet in this case to send to the Guatemalan Consulate, who, in his extensive experience in removal operations, would respond within 2-3 business days. DO Robinson further testified that based on the multiple deportation flights a week that fly to Guatemala form the United States, ICE would likely be able to remove Petitioner to Guatemala within two weeks. Besides the stay of removal existing during the pendency of these proceedings, no further stay of removal exists to prevent Petitioner's removal.

---

[2] Federal Respondents note that numerous motions were filed by Petitioner, including an appeal; the complete procedural posture is noted in Respondents' Response.

[3] Petitioner filed an untimely appeal on November 26, which the Board of Immigration Appeals rejected and dismissed on November 28.

ARGUMENT

I. A SIGNIFICANT LIKELIHOOD OF REMOVAL IN THE REASONABLY FORESEEABLE FUTURE EXISTS.

A significant likelihood of removal exists in the reasonably foreseeable future. First, on the facts, DO Robinson's unrefuted testimony is that DHS can effectuate Petitioner's removal within 2 weeks of the stay being lifted, based on the Petitioner having a valid travel document, the only 2-3 days needed to receive a response from the Guatemalan Consulate, and the frequency of removal flights to Guatemala. Petitioner bears the burden of proving no significant likelihood of removal in the reasonably foreseeable future exists but provided no evidence to the contrary. The Court should therefore conclude that on these facts a significant likelihood of removal in the reasonably foreseeable future exists. But, for Petitioner's litigation choices, which are his to make, Petitioner's detention would have already ceased with his removal.

Second, no legal impediment exists to prevent Petitioner's removal. While Petitioner has two pending visa applications, merely filing a visa application does not prevent removal under a final order of removal. And it is telling that Petitioner has yet to identify any binding authority that would prevent removal due to the mere filing of a U-visa application[4] and T-visa application.

The thrust of Petitioner's case here is that Petitioner's Special Immigrant Juvenile classification prevent removal. Petitioner's theory not only lacks any legal authority to

[4] While not relevant to these proceedings, it is important to note that Petitioner's U-Visa application can still be adjudicated even if he is removed and, should it be granted and visa become available, Petitioner can consular process to legally enter the United States under such visa.

support the same, but relies solely on the testimony of a biased witness – a witness whom the Court certified as an expert while acknowledging is serving as class action counsel challenging the very policy at issue here – deferred action.[5] Petitioner's purported expert relied solely on her personal analysis of she thinks Congressional intent was in creating Special Immigration Juvenile classification. But the Court need not analyze Congress's intent – if Congress intended to bar DHS from removing individuals with SIJ classification, it could have done so. Congress for example created a similar bar via the codification of deferred action for individuals that receive a bona fide determination under a valid U-visa application. *See* 8 CFR § 245.24.

As USCIS Assistant Center Director Jerome D. Johnson testified, SIJ is not in and of itself a legal status – but a classification, a step in the process towards gaining legal status. ACD Johnson's testimony is directly supported by applicable law: *See* 8 CFR § 204.11. While Petitioner's Counsel and Petitioner's proffered expert may want a policy outcome that creates legal status or ate least prevent removal of individuals with SIJ classification, the INA *does not prevent removal under a valid final order of removal.* Regardless, such policy outcome is well beyond the scope of this habeas action and barring any binding legal authority, must be rejected.

[5] Federal Respondents reserve those arguments of bias and its objection to Ms. Scholz as an expert for appeal. Federal Respondent understand the Court indicated it does not find such arguments persuasive; regardless, Federal Respondents posit that while Ms. Scholz is certainly a licensed attorney – her testimony revealed her bias as an advocate who only works to with advocates representing individuals in removal proceedings that are in part trying to prevent removal of individuals with SIJ classification. Ms. Scholz bias is evident from the fact that is serving as class counsel attempting to prevent USCIS's change in policy regarding DA for individuals with SIJ classification. Federal Respondents also object to Ms. Scholz as not being helpful to the Court – Ms. Scholz testimony amounted to nothing more than legal argument, which remains the job of Petitioner's Counsel, not a testifying expert.

Equally as misguided is Petitioner's arguments regarding SIJS Deferred Action (DA). First, Petitioner does not hold Deferred Action. ACD Johnson unrefuted testimony informed the Court that USCIS reviews grants of deferred action if requested to do the same or upon receiving applications for benefit,[6] such as work authorization. ACD Johnson testified that adjudicators review DA and identify whether Petitioner should have been granted the same to begin and any new derogatory information. Here, ACD Johnson testified that USCIS should not have issued DA in the first place, due to Petitioner's detention and criminal history at the time of filing, and that new derogatory information existed at the time of the review: Petitioner's final removal order and continued detention, evidencing to USCIS that ICE considers Petitioner a priority for removal.

ACD Johnson also testified that deferred action for individuals with SIJ classification is merely a tool of prosecutorial discretion. ACD's Johnson is squarely supported by applicable legal authority. "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*

[6] Regardless of the Court's views of the review of DA here, USCIS would have likely reviewed Petitioner's DA during its adjudication of Petitioner's EAD renewal, which Petitioner's filing regarding a biometrics request acknowledges is underway.

> *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). Petitioner's proffered expert made many statements regarding the same, but again the key language here is that such lack of accrual of unlawful presence is for the sole purpose of adjusting, not preventing removal. *See id.* ("***Unlawful presence.*** During the time a petitioner for U nonimmigrant status who was granted deferred action or parole is on the waiting list, no accrual of unlawful presence under section 212(a)(9)(B) of the INA, 8 U.S.C. 1182(a)(9)(B), will result. However, a petitioner may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS."). And most importantly, such language only applies to individuals with DA due to a bona fide determination under a U-visa application – not SIJ classification, ***because no such corresponding laws or regulations exist for individuals with SIJ classification.*** As Judges in this district have explicitly acknowledged that DA is merely an exercise of prosecutorial discretion and this Court should not depart from the same absent any binding legal authority. *See Domingo M.M. v. Shea, et al.*, No. 25-cv-2830 (LMP/ECW) (D. Minn. August 1, 2025) (ECF 24).

Based on *Zadvydas v. Davis*, 533 U.S. 678 (2001), a significant likelihood of removal in the reasonably foreseeable future exists both factually and legally. Contrasted with *Zadvydas*, which "was primarily concerned with situations where 'removal seems a remote possibility at best,' is 'no longer practically attainable,' and 'has no obvious termination point,'" here Petitioner's removal is not a remote possibility. Petitioner's detention for removal purposes has an obvious termination point, is practically attainable, and faces only a temporary and routine impediment – namely the pending appeal of the denial of his motion to reopen, which is proceeding apace. To a significant extent the duration of Petitioner's detention is the result of his own litigation choices, such as several motions and appeals. The record thus shows a significant likelihood that Petitioner will be removed from the United States in the reasonably foreseeable future. The constitutional due process standard set forth in *Zadvydas* is met, and the Petition should be denied.

II. CONTEMPT IS NOT WARRANTED.

A finding of contempt is not warranted in this case. Construing the federal contempt statute, 18 U.S.C. § 401, the Eighth Circuit explained, "There are two types of civil contempt: coercive and compensatory." *Coleman v. Espy*, 986 F.2d 1184, 1190 (8th Cir. 1993) (citing *Klett v. Pim*, 965 F.2d 587, 590 (8th Cir. 1992); *United Mine Workers of America*, 330 U.S. 258, 202-04 (1947)). The circuit court further explained: "With coercive contempt penalties, the court issues sanctions such as fines or incarceration to force the offending part to comply with the court's order…. With compensatory contempt, the court attempts to compensate the plaintiff for the damage that the offending party has caused by its contempt." *Id.* at 1190.

Coercive sanctions to force the government to comply with the Court's order are unnecessary. First, Federal Respondents submitted an unrefuted sworn declaration evidencing that Petitioner's biometrics have been taken and provided to USCIS, which received the same, and has committed to using the biometrics received to adjudicate Petitioner's pending U-visa and T-visa applications. Second Ms. Gonzalez's credible, unrefuted testimony during the hearing explained to the Court that she was not even aware of the Court order requiring the facilitation of collection of Petitioner's biometrics. If any violation occurred, it was clearly not willful or done with the intent of defying the Court's order.

As the caselaw states, "the paradigmatic ... civil contempt sanction" is a conditional penalty that may be "purge[d]" through compliance with the original order. *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 828 (1994); *Shillitani v. U.S.*, 384 U.S. 264, 368 (1966). Because Respondents have now complied with the Court's order, a finding of contempt and coercive sanctions would not be appropriate.

III. RESTRAINING USCIS'S TERMINATION OF PETITIONER'S DA IS BEYOND THE SCOPE OF HABEAS PROCEEDING.

Judicial review of immigration matters, including immigration detention issues, is limited. *See I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *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."). The Supreme Court has thus "underscore[d] the limited scope of inquiry into immigration legislation," and "has 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). 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, and because public safety is at stake. *See Shaughnessy v. United States ex rel. Mezei*, 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 th[e] 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 . . . while arrangements were being made for their deportation.").

Further, 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. The burden is on the habeas petitioner to demonstrate that he or she is in custody in violation of the Constitution or laws or treatises of the United States to warrant relief. *See Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011). For immigration detainees, courts must employ a narrow standard of review of decisions made by the Congress or the President regarding immigration and must exercise "the greatest caution" in evaluating constitutional claims that implicate those decisions." *Mathews v. Diaz*, 426 U.S. 67, 81-82 (1976)).

The only relief available in habeas proceeding is whether a writ of habeas corpus should issue – nothing more, nothing less. Should Petitioner want to challenge USCIS's policy regarding biometrics collection of detained individuals, or the termination of deferred action in this case, such arguments are more appropriately raised in a suit under the Administrative Procedure Act.

CONCLUSION

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

Respectfully submitted,

DANIEL N. ROSEN
United States Attorney

s/ *David R. Hackworthy*
David R. Hackworthy (0400704)
Special Assistant U.S. Attorney
600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
Phone: 612-664-5600
David.r.hackworthy@ice.dhs.gov

DATED: March 10, 2026

Counsel for Federal Respondents