

the paperwork supposedly justifying custody, and have not identified any concrete or lawful basis showing that his removal is significantly likely in the reasonably foreseeable future, despite being put on notice of the Petitioner's protection through his U Visa application.

JURISDICTION

1. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) because Petitioner is in custody in violation of the Constitution and laws of the United States.
2. The Court also has jurisdiction under 28 U.S.C. § 1331 (federal question), the APA, 5 U.S.C. § 701 et seq., and Article I, § 9, clause 2 of the United States Constitution (Suspension Clause).
3. Nothing in the INA bars judicial review of Petitioner's challenge to the lawfulness of her civil detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018) (holding that 8 U.S.C. §§ 1252(b)(9) and 1226(e) do not bar constitutional challenges to immigration detention).

VENUE

4. Venue lies in this District pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), because Petitioner is detained within the jurisdiction and Respondents may be reached for service of process here.
5. Venue is also proper under 28 U.S.C. § 1391(e) because Respondents are officers of the United States and a substantial part of the events giving rise to this petition occurred within this District.

PARTIES

6. Petitioner is a native and citizen of Guatemala and the spouse of a U.S. Citizen and the father of four (4) U.S. citizen children, including three (3) adoptive children who he is providing a stable life for.
7. Respondent David Easterwood is the Field Office Director for Enforcement and Removal Operations in this jurisdiction and is Petitioner's immediate custodian. He is sued in his official capacity.
8. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is responsible for the agency's enforcement policies and custodial decisions. He is sued in his official capacity.
9. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security and has authority over ICE and its policies. He is sued in his official capacity.
10. Respondent Todd Blanche is the Attorney General of the United States and has authority over the Executive Office for Immigration Review. He is sued in his official capacity.
11. Respondent Mike Jambor is the Captain/ Jail Administrator of the Kandiyohi County Jail and is the direct custodian of the Petitioner. He is sued in his official capacity.

FACTUAL ALLEGATIONS

12. Petitioner is a native and citizen of Guatemala. Petitioner has lived in the United States for 25 years and has established deep family and community ties here.
13. Petitioner has a final order of removal arising from earlier immigration proceedings. In or around 2011, Petitioner was granted voluntary departure but did not depart. After that, he came to the attention of immigration authorities and has remained under ICE supervision for years. Since approximately 2017, Petitioner has complied with regular ICE reporting requirements and has appeared for check-ins approximately every six months, as directed.
14. Petitioner has consistently complied with ICE's supervision requirements. He has not absconded, failed to report, or otherwise violated the conditions imposed on him.
15. Petitioner has no criminal history. His record is otherwise clean. Petitioner has a pending U nonimmigrant visa petition with United States Citizenship and Immigration Services ("USCIS").
16. In connection with that U-visa process, USCIS granted Petitioner deferred action and employment authorization approximately three (3) years before his present detention. He has not been served with any notice from USCIS terminating his deferred action.

17. Petitioner has relied on that grant of deferred action and work authorization in structuring his life, supporting his family, and continuing to comply with ICE requirements.
18. Petitioner is married to his wife, Susan Longoria. They have been married for approximately two years. Petitioner and his wife are raising four United States citizen children, who are approximately sixteen, fifteen, fourteen, and twelve years old. Petitioner adopted three of those children approximately seven years ago and has acted as their father in every meaningful respect. Petitioner has deep emotional and parental bonds with all four children and is a central, stabilizing figure in their lives.
19. Petitioner's wife suffers from serious medical conditions, including diabetes and high blood pressure.
20. Because of her medical conditions, Petitioner's wife depends substantially on Petitioner for financial support, stability in the home, and assistance with the daily functioning of the household. Before his detention, Petitioner worked and used his income to pay the family's bills and support his wife and children. Petitioner is the primary financial provider for the household.
21. Since Petitioner's detention, his wife and children have suffered substantial hardship, including emotional distress, financial instability, and disruption to the family's ability to function on a day-to-day basis.

22. Petitioner's absence has been especially harmful because of his wife's ongoing health problems and the family's dependence on him for support.
23. On the date of the arrest, Petitioner appeared for a scheduled ICE check-in, just as he had done repeatedly over the years. Petitioner reported voluntarily and in compliance with ICE's instructions. At that check-in, ICE officers detained Petitioner. During that encounter, ICE officers told Petitioner that the law had changed but they did not provide a meaningful explanation identifying any actual change in circumstances.
24. Petitioner was not served with any written explanation of why he was being re-detained or any notice of warrant of his arrest. Petitioner was not provided with a written revocation of supervision, a written custody determination, or a written explanation of any purported changed circumstances making removal significantly likely in the reasonably foreseeable future. Petitioner was not given a deportation date. Petitioner was not informed of any concrete travel arrangements, acceptance by Guatemala, or imminent removal plan.
25. Petitioner does not possess a Guatemalan passport. Petitioner has no Guatemalan travel documentation. To Petitioner's knowledge, Respondents have not shown him any travel document, itinerary, or other evidence demonstrating that Guatemala has agreed to accept him for repatriation. To Petitioner's knowledge, Respondents have not shown him any document demonstrating that USCIS has terminated his deferred action.

LEGAL FRAMEWORK

8 U.S.C. § 1231(a)

26. Section 1231(a)(1) establishes a “removal period” of 90 days during which DHS “shall” remove the noncitizen.
27. Detention during this 90-day period is mandatory. § 1231(a)(2) (“During the removal period, the Attorney General shall detain the alien.”).
28. The removal period begins on the latest of the events identified in § 1231(a)(1)(B), including the date an order of removal becomes final or, in reinstatement cases, the date DHS reinstates the prior order.
29. After the 90-day removal period, continued detention must be tethered to removal and may not be prolonged where removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 689–90 (2001).

Foreseeability of Removal

30. In *Zadvydas v. Davis*, the Supreme Court held that post-order detention under 8 U.S.C. § 1231(a) is constitutionally limited and may not continue indefinitely once removal is no longer reasonably foreseeable. 533 U.S. 678, 699–701 (2001). Under the *Zadvydas* framework, after a presumptively reasonable period of detention, continued detention becomes unlawful if there is no significant likelihood of removal in the reasonably foreseeable future. *Id.* Courts have continued to apply this framework to assess the legality of post-order detention

and to grant habeas relief where the government cannot demonstrate a realistic path to removal.

31. Consistent with *Zadvydas*, numerous district courts have granted habeas petitions or ordered release where the petitioner demonstrated the existence of a legal or practical barrier to removal that rendered removal not reasonably foreseeable. For example, in *Primero v. Mattivelo*, the court granted relief where the petitioner had SIJS-related deferred action and the record showed no termination of that deferred action, concluding that the petitioner had demonstrated that removal was not reasonably foreseeable. 2025 WL 1899115, at *5. (“[W]here Petitioner has shown that USCIS granted him deferred action that will remain valid... in the absence of early termination and early termination has not occurred,” removal was not reasonably foreseeable.).
32. Similarly, in *Guerra Leon v. Noem*, the court ordered release of a SIJS beneficiary subject to a final order of removal where deferred action remained in effect. (“[C]ourts have granted habeas relief where the government seeks to remove noncitizens whose deferred action status remains in effect. *See, e.g., Sepulveda...* (granting habeas relief to petitioner with deferred action status); *Guerra Leon v. Noem* (W.D. La. Oct. 30, 2025).”).
33. Courts have likewise granted habeas relief where deferred action or other immigration protections operated as a barrier to execution of a removal order, and where detention was premised on removal that could not occur absent further agency action. In *Sepulveda Ayala v. Bondi*, the court granted relief under the

Zadvydas framework where the petitioner had a grant of deferred action and the government's asserted basis for detention depended on removal that could not proceed while deferred action remained in effect. 2025 WL 2209708, at *4. ("The Government's sole basis for detaining Sepulveda Ayala is that it may do so in order to remove him. ... cf. *Phan v. Reno*, 56 F. Supp. 2d 1149, 1156 (1999) ('Detention by the INS can be lawful only in aid of deportation.'). For the reasons above, the Court finds that Sepulveda Ayala's deferred action status prevents removal. As a result, the Court concludes that the Government has no legal basis to detain Sepulveda Ayala and that Sepulveda Ayala has met his burden on his habeas petition.").

34. Other courts have also recognized that where removal is prevented by an unexpired grant of deferred action, detention under § 1231 may raise significant foreseeability concerns under *Zadvydas*. See, e.g., *Forsah R-Z v. Noem*, 2026 WL 310069 (E.D. Cal. Feb. 5, 2026) (Ordering immediate release of SIJS beneficiary with final removal order and deferred action, reasoning that since he could not be removed given unexpired deferred action, his detention violated due process. Also prohibiting govt from "impos[ing] any additional restrictions on Petitioner, unless that is determined to be necessary at a future pre-deprivation/custody hearing" and permanently enjoining government "from re-arresting or re-detaining Petitioner absent compliance with constitutional protections, which include, at a minimum, pre-deprivation notice describing the change of circumstances necessitating Petitioner's arrest and detention).

35. “As to deferred action, once such status is conferred, for humanitarian reasons, ‘no action will thereafter be taken to proceed against an apparently deportable alien[.]’ *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999).
36. The Court in *Zadvydas* found “... interpreting the statute to avoid a serious constitutional threat, we conclude that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute. *See E. Coke, Institutes* *70b (“*Cessante ratione legis cessat ipse lex*”) (the rationale of a legal rule no longer being applicable, that rule itself no longer applies).” *See Zadvydas*, 533 U.S. at 699.
37. In addition,
- “... the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no [700] longer authorized by statute. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions. *See supra*, at 695 (citing 8 U. S. C. §§ 1231(a)(3), 1253 (1994 ed., Supp. V); 8 CFR § 241.5 (2001)).”
38. The *Zadvydas* Court thought it “practically necessary to recognize some presumptively reasonable period of detention.”. *See Id.* at 701. Said ‘presumptively reasonable’ period was deemed to be six (6) months, but for many reasons, this presumption can be rebutted and should be rebutted in this case.
39. The *Zadvydas* Court’s language makes it evident that this was not a hard and fast rule. (“We realize that recognizing this necessary Executive leeway will often call

for difficult judgments...” *Id.* at 700 and “The application of the “reasonable time” limitation is subject to federal-court review. The basic federal habeas statute grants the federal courts authority to determine whether post-removal-period detention is pursuant to statutory authority. In answering that question, the court must ask whether the detention exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute’s purpose of assuring the alien’s presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized.” *Id.* at Syllabus).

40. Even assuming the Court had not expressly stated that the application of reasonable time is subject to judicial review, in the context of *Zadvydas*, the presumptive period made sense. The Court was asked to consider two (2) fact patterns, being *Zadvydas*, who was an alien with a long criminal record, involving drug crimes, attempted robbery, attempted burglary, and theft, as well as flight from criminal and immigration proceedings, who the government attempted to remove (unsuccessfully) to four (4) different countries, and Kim Ho Ma, who was convicted of a gang related manslaughter, challenged his detention beyond the removal period after Cambodia refused to take him, because government found they were not satisfied that he would not be violent beyond the release period. *See Id.* at 686.

41. In these cases, there was nothing preventing or blocking the removal of the individuals in question, and thus the Court’s reasoning in giving “leeway” (*Id.* at

700) to the government in a presumptively lawful period of detention of six (6) months was also in concert with the fact that the government could continue to make such efforts without affecting some other lawful statute.

42. Other Courts have considered this issue, finding that,

“By delaying the burden shift until after the six-month period expires, the Supreme Court “limit[ed] the occasions”—but, crucially, did not *eliminate* the occasions—when courts will need to make the ultimate determination of whether a Petitioner is reasonably likely to be removed in the foreseeable future. The question of whether “continued” detention is authorized is a question that can be asked, and must be resolved, for detention under § 1231(a)(6) to be constitutional, regardless of whether the six-month period has ended.”

See Cruz-Medina v. Noem et al, No. 1:2025cv01768 (D. Md. 2025) (emphasis in original).

43. And, “the point here is that any presumption that removal is reasonably foreseeable during the six-month period is just that, a presumption, one that can be rebutted upon a showing that removal is not reasonably foreseeable.” *Id* at 15, ft note 5.

44. The Code of Federal Regulations also supports this argument. Pursuant to 8 C.F.R. §§ 241.13(d), (e), where a noncitizen asserts that there is no significant likelihood of their removal in the reasonably foreseeable future, at any time post order, that alien may request a review of their custody, and either within 10 business days of that request, or at the expiration of the removal period, such shall be responded to. This is conclusory that the *Zadvydas* Court, and the agency themselves, meant for the six (6) month presumption to be rebuttable.

8 C.F.R. §241.13

45. The regulation addresses re-detention after release. Specifically, 8 C.F.R. § 241.13(i)(2) provides that if a noncitizen has been released because removal was not significantly likely in the reasonably foreseeable future, DHS may revoke that release and re-detain the person only upon a showing of “changed circumstances” demonstrating that removal has become significantly likely in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(i)(2).
46. Thus, once DHS has already determined, either expressly or functionally through release under supervision, that detention is no longer justified, it may not simply reverse course without satisfying the regulatory standard for re-detention. The burden is on the government to identify changed circumstances and to show that those changed circumstances now make removal significantly likely in the reasonably foreseeable future. *Id.*
47. The District of Minnesota recently confirmed that this burden rests with the government. In *Aleixi A.-H. v. Easterwood*, the Court held that “when revoking a noncitizen’s Order of Supervision under 8 C.F.R. § 241.13(i)(2) . . . it is the Government’s burden to demonstrate changed circumstances that make the noncitizen’s removal significantly likely in the reasonably foreseeable future.” *Aleixi A.-H. v. Easterwood*, No. 26-cv-1155 (LMP/EMB), slip op. at 2 (D. Minn. Feb. 17, 2026).

48. *Aleixi A.-H.* further held that the government failed to carry that burden where the only evidence offered was that ICE was “seeking a travel document to effect” removal. *Id.* The Court explained that such evidence fell “woefully short,” because the “bare fact that ICE officials” were seeking a travel document “tells the Court nothing about the ‘history of [ICE’s] efforts’ to remove noncitizens similarly situated to [the petitioner], the ‘ongoing nature of [ICE’s] efforts’ to remove [the petitioner] and [the petitioner’s] assistance with those efforts, and ‘the reasonably foreseeable results’ of ICE’s removal efforts.” *Id.* at 2–3 (quoting *Roble v. Bondi*, 803 F. Supp. 3d 766, 773 (D. Minn. 2025), and 8 C.F.R. § 241.13(f)).
49. Because the government in *Aleixi A.-H.* failed to satisfy its burden under § 241.13(i)(2), the Court ordered immediate release subject to the preexisting conditions of supervision. *Id.* at 3. That holding confirms that § 241.13(i)(2) is not aspirational or discretionary. It is an enforceable limit on DHS’s power to re-detain a person previously living in the community under supervision.
50. The structure of § 241.13 also confirms that prolonged detention after release is the exception, not the rule. If DHS wishes to continue holding a noncitizen beyond the ordinary post-order period notwithstanding lack of foreseeable removal, it must proceed under the narrow specialized-danger provisions of 8 C.F.R. § 241.14. Absent those extraordinary circumstances, §§ 241.13(h) and (i)(2) require release or a valid showing of changed circumstances justifying re-detention.
51. Accordingly, § 241.13 confirms three principles relevant here: first, detention under § 1231(a)(6) must remain tied to a significant likelihood of removal in the

reasonably foreseeable future; second, where DHS cannot make that showing, release under supervision is required; and third, once release has occurred, DHS may re-detain only upon proof of changed circumstances that now make removal significantly likely in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(d), (f), (g), (h), (i)(2); *Aleixi A.-H. v. Easterwood*, No. 26-cv-1155 (LMP/EMB) (D. Minn. Feb. 17, 2026).

Victims of Crime

52. Congress created the U visa as a victim-centered form of humanitarian protection designed to strengthen law enforcement's ability to detect, investigate, and prosecute domestic violence, sexual assault, trafficking, and other serious crimes, while simultaneously protecting noncitizen victims who assist in those efforts. *See* 8 U.S.C. § 1101(a)(15)(U); New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,014–15 (Sept. 17, 2007). The entire structure of the U-visa scheme reflects Congress's judgment that public safety is advanced, not hindered, when survivors can report crime and cooperate with authorities without fearing immediate immigration detention and deportation.
53. Under that framework, USCIS first reviews whether a petition is bona fide, then adjudicates waiting-list eligibility when visa numbers are unavailable, and finally adjudicates the petition for U nonimmigrant status when a visa becomes available. Because Congress capped the number of principal U visas that may be issued

annually, it expressly contemplated that many meritorious applicants would wait years before final adjudication. *See* 8 C.F.R. § 214.14(d)(2).

54. To prevent that backlog from nullifying the statute's purpose, the regulations require USCIS to place eligible petitioners on a waiting list when they are not granted U-1 status "due solely to the cap." 8 C.F.R. § 214.14(d)(2). The regulation then provides the protection that matters here: USCIS "will grant deferred action or parole" to such waiting-list recipients and "may authorize employment." *Id.* That is not incidental. It is the regulatory mechanism that carries out Congress's intent that qualifying crime victims not be removed simply because administrative delay prevents immediate visa issuance.
55. USCIS later implemented an additional front-end protection through the Bona Fide Determination process. As courts have recognized, that process is not a meaningless clerical step. It reflects that USCIS has determined that the petition is properly supported for initial review, that the petitioner warrants a favorable exercise of discretion, and that the petitioner has passed the relevant background and security screening. *See, e.g., Victor G. v. Lyons*, No. 26-cv-119 (ECT/SGE) (D. Minn. Jan. 17, 2026) (noting that USCIS "determines whether the petitioner poses a risk to national security or public safety" and conducts "background and security checks"); *see also B.D.A.A. v. Bostock*, No. 6:25-cv-02062, 2025 WL 3484912, at *5 (D. Or. Dec. 4, 2025); USCIS Policy Manual, Vol. 3, Pt. C, Ch. 5. When USCIS grants deferred action and work authorization through that process, it is conferring an affirmative protection while the petition remains pending.

56. The District of Minnesota has now repeatedly adopted that framework. In *Marcos L.*, the court explained that where “nothing in the record supports any argument that Respondents revoked [the petitioner’s] employment authorization or terminated his deferred-action status,” “there is no basis for his detention.” *Marcos L. v. Noem*, No. 26-cv-676 (MJD/SGE) (D. Minn. Feb. 3, 2026). Likewise, *Victor G.* held that where the record contained no indication that USCIS had revoked the grant of deferred action, the petitioner remained protected from removal and was entitled to release. *Victor G. v. Lyons*, No. 26-cv-119 (ECT/SGE) (D. Minn. Jan. 17, 2026). *Juan M.* is to the same effect. There, ICE arrested a U-visa deferred-action recipient despite his valid work permit and deferred-action grant, and the court ordered immediate release. *Juan M. v. Att’y Gen.*, No. 26-cv-266 (ECT/JFD) (D. Minn. Jan. 17, 2026).
57. That result follows directly from the governing regulations. The same regulation that provides deferred action to U-visa waiting-list recipients also allocates the authority to terminate that protection to USCIS. See 8 C.F.R. § 214.14(d)(3). In other words, the regulatory framework does not allow ICE to accomplish through arrest and removal what the regulation assigns to USCIS to decide through the adjudicatory process. Where USCIS has granted deferred action and has not revoked it, ICE may not treat that protection as though it never existed. *See id.*; *see also Nevarez Jurado*, 2025 WL 3687264, at *9 n.10 (“USCIS apparently has done nothing to terminate [petitioner’s] deferred action.”).

Due Process

58. Immigration detention is civil in nature, and the Fifth Amendment places substantive and procedural limits on the Government's ability to detain noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).
59. The Due Process Clause prohibits detention that is arbitrary, indefinite, or not reasonably related to its purported purpose. *Zadvydas*, 533 U.S. at 690; *Kansas v. Hendricks*, 521 U.S. 346, 358 (1997).
60. Procedurally, the Due Process Clause requires a meaningful opportunity to challenge detention and an individualized assessment of dangerousness or flight risk when liberty is at stake. *See Mathews v. Eldridge*, 424 U.S. 319, 332–35 (1976); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 28–29 (1st Cir. 2021) (requiring individualized bond hearings for prolonged detention).
61. Post-removal-period detention under § 1231(a) therefore must conform to constitutional limits, and prolonged detention without an individualized assessment of necessity raises serious due process concerns.

Administrative Procedure Act

62. Petitioner's detention is also reviewable under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

63. Under § 706(2)(A), a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions” that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.
64. Agency detention decisions that disregard statutory limits, fail to consider less-restrictive alternatives, ignore relevant factors, or rely on post hoc justifications are arbitrary and capricious.
65. Section 706(1) further authorizes courts to “compel agency action unlawfully withheld or unreasonably delayed,” including legally-required custody reviews and fear screenings under 8 C.F.R. §§ 241.4 and 241.13.
66. The APA applies because neither § 1231 nor its implementing regulations preclude judicial review of custody decisions, and constitutional claims fall outside any INA channeling provisions. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018).
67. In the context of prolonged detention, the APA reinforces constitutional limits and confirms that detention must remain tethered to removal and grounded in individualized assessment, rather than automatic or indefinite confinement.

ARGUMENT

I. Petitioner’s detention is unlawful because his removal is not significantly likely in the reasonably foreseeable future.

68. This case does not involve an ordinary post-order detainee for whom removal is merely awaiting logistics. Petitioner is a pending U-visa applicant to whom USCIS

has already granted deferred action and work authorization. He has held that protection for approximately three years. To his knowledge, USCIS has never revoked it. That matters because Respondents' only asserted justification for detention is removal, and removal cannot lawfully proceed while that grant remains in effect.

69. Petitioner is not relying on the mere existence of a pending application. He relies on the fact that USCIS already reviewed his case sufficiently to confer deferred action and employment authorization under the U-visa framework. *See* Exh. A. That is a present immigration protection, not a speculative future possibility. ICE therefore cannot treat Petitioner as though he were simply an unprotected noncitizen awaiting transportation. If the agency's position were accepted, ICE could revoke a USCIS grant of deferred action simply by arresting the recipient and declaring removal foreseeable. The regulations do not permit that result.
70. The governing framework assigns the authority to terminate that protection to USCIS, not to ICE through arrest and removal. *See* 8 C.F.R. § 214.14(d)(3). Removal here would therefore operate as a *de facto* revocation of Petitioner's deferred action without the process contemplated by the governing regulation. That is precisely why courts have treated unrevoked deferred action as a present barrier to removal and a sufficient basis for habeas relief. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999); *Victor G. v. Lyons*, No. 26-cv-119 (ECT/SGE) (D. Minn. Jan. 17, 2026); *Juan M. v. Att'y Gen.*, No. 26-cv-266

(ECT/JFD) (D. Minn. Jan. 17, 2026); *Marcos L. v. Noem*, No. 26-cv-676

(MJD/SGE) (D. Minn. Feb. 3, 2026).

71. Those cases fit this one. Like the petitioners in *Juan*, *Victor*, and *Marcos*, Petitioner was not merely a U-visa filer. He was already under deferred action when ICE seized him. Like those petitioners, nothing in the record indicates that USCIS revoked his deferred action or terminated his work authorization before ICE detained him. And like those petitioners, he was detained anyway. Under those circumstances, detention is unlawful because lawful removal is not presently available.
72. This case is also stronger than a routine *Zadvydas* case because the barrier to removal is not merely diplomatic or practical. It is legal. Petitioner's continued detention rests on the fiction that ICE may proceed toward removal despite a still-operative grant of deferred action. But detention under § 1231 can be lawful only in aid of deportation. Where removal cannot lawfully occur, detention loses its statutory anchor. *See Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001); *Sepulveda Ayala v. Bondi*, 2025 WL 2209708, at *4.
73. Nor have Respondents identified any individualized fact that would distinguish Petitioner from the prevailing deferred-action cases. He has no criminal history. He was located only because he continued doing exactly what ICE required him to do for years: appear at his scheduled check-ins. He was not hiding. He was not absconding. He was not encountered during a targeted enforcement action based on danger or flight. He was arrested because he complied. On these facts, the

conclusion is straightforward: Respondents are detaining Petitioner for a removal that they have no present legal authority to execute.

II. Respondents violated 8 C.F.R. § 241.13(i)(2) by re-detaining Petitioner without changed circumstances.

74. Even if the Court were to set aside the independent legal barrier created by Petitioner's deferred action, the detention still fails for a separate reason: Respondents re-detained a fully compliant supervisee without identifying any changed circumstance making removal significantly likely now.
75. Petitioner had been checking in with ICE approximately every six months since 2017. He complied with supervision for years. He has no criminal history. He has a stable family life, a wife, four United States citizen children, and longstanding ties to the community. He did not violate supervision. He did not disappear. He did not commit a new offense. He did not obstruct removal efforts. Instead, he appeared for his routine ICE appointment, just as he had done for years, and was arrested.
76. That is functionally a revocation of release from supervision. Once that is recognized, § 241.13(i)(2) controls. And under *Aleixi A.-H. v. Easterwood*, it is the Government's burden to show changed circumstances making removal significantly likely in the reasonably foreseeable future. No. 26-cv-1155 (LMP/EMB), slip op. at 2–3 (D. Minn. Feb. 17, 2026). That burden has not been met here.

77. ICE's statement that "things had changed" is not a changed circumstance. It is not even an explanation. It identifies no new fact about Petitioner, no new document from Guatemala, no new travel authorization, no new removal arrangement, no new loss of immigration protection, and no new conduct by Petitioner. At most, it suggests a change in agency posture. But a policy shift or an internal enforcement preference is not the individualized changed circumstance § 241.13(i)(2) requires.

78. That point is especially clear here because the material facts have not changed in any way that would make removal more likely than it was during the many years ICE allowed Petitioner to remain in the community. He was under supervision before. He is under the same final order now. He had U-visa protection before. He has it now. He had no criminal record before. He has none now. He lacked Guatemalan travel documents before. He lacks them now. The only thing that changed is that ICE decided to jail him.

79. Aleixi rejects precisely that sort of unsupported re-detention. There, the court held that even evidence that ICE was "seeking a travel document to effect" removal was "woefully short" because it did not show the history of efforts, the ongoing nature of those efforts, or the reasonably foreseeable results. Here, Respondents have not even done that much. Petitioner was given no removal date, no travel-document information, no written revocation notice, and no written explanation of any supposed changed circumstance. If the showing in Aleixi was insufficient, the record here is even more clearly insufficient.

80. The regulation exists to prevent exactly this sort of arbitrary re-imprisonment.

Once DHS has allowed a person to live in the community under supervision because detention is not justified, it cannot simply reverse course and jail that person years later without satisfying the governing standard. Because Respondents did not do so here, Petitioner's immediate release is required.

III. Respondents are not ready to remove Petitioner and cannot rebut the showing that removal is not reasonably foreseeable.

81. Respondents also cannot justify this detention by suggesting that removal is practically imminent. The facts cut the other way.

82. Petitioner is a Guatemalan national with no passport and no travel documentation. He has not been given a deportation date. He has not been shown any travel document request, any Guatemalan acceptance, any itinerary, any flight arrangement, or any evidence that removal is scheduled or operationally ready. Respondents told him only that they "might" deport him. That is not a concrete removal plan. It is speculation.

83. That matters under both *Zadvydas* and § 241.13. The question is not whether the Government can imagine a future scenario in which removal might someday occur. The question is whether removal is significantly likely in the reasonably foreseeable future. On this record, Respondents cannot carry that burden. There is no evidence of current readiness to remove Petitioner, and there is certainly no

evidence of readiness sufficient to overcome the additional legal obstacle created by his deferred action.

84. *Aleixi* is again instructive. There, the court rejected the government's attempt to rely on vague assertions about travel documents and required real evidence showing why removal had become significantly likely. The same principle applies here with even greater force. Petitioner has not even been told that travel documents are being sought, much less shown that Guatemala will accept him in the near future. And because he has fully complied with every prior ICE reporting requirement, this case presents none of the concerns that sometimes lead courts to give the Government more leeway. Petitioner has already demonstrated, over years, that he can be trusted to appear.

85. The absence of any concrete removal plan also underscores the irrationality of detention in this case. If Respondents were genuinely ready to remove Petitioner, one would expect paperwork, dates, travel-document activity, or at least an articulated timeline. Instead, there is only detention first and explanation later. That is exactly what *Zadvydas* forbids.

IV. Respondents' detention decision is arbitrary, capricious, and not in accordance with law.

86. The detention is also unlawful under the APA because Respondents ignored the governing regulatory framework, disregarded Petitioner's existing deferred-action protection, failed to identify changed circumstances, and refused to consider the

obvious less restrictive alternative that had already proven effective for years: continued supervision.

87. An agency acts arbitrarily and capriciously when it fails to engage the factors that matter, relies on post hoc rationalizations, or ignores obvious alternatives. That is what happened here. Respondents jailed a compliant U-visa deferred-action grantee at a routine check-in without providing a written explanation, without identifying a valid change in circumstance, without addressing the legal effect of his deferred action, and without accounting for the years in which supervision worked exactly as intended.

88. The decision is also “not in accordance with law” because it conflicts with the U-visa regulations, § 241.13(i)(2), and the fundamental requirement that post-order detention remain tied to lawful, reasonably foreseeable removal. It is “without observance of procedure required by law” because Petitioner was not given the paperwork or explanation supposedly authorizing the re-detention. And it is “in excess of statutory jurisdiction” insofar as ICE treated a still-operative USCIS grant as though it could be nullified by enforcement action alone. *See* 5 U.S.C. § 706(2)(A), (C), (D).

V. Petitioner’s detention violates the Fifth Amendment.

89. The Fifth Amendment problem is equally clear. Petitioner’s liberty interest is at its apex. He was living in the community, supporting his family, caring for a wife with serious medical conditions, and raising four United States citizen children.

He was seized not because he posed a danger or fled, but because he continued to comply with ICE's reporting requirements. The risk of erroneous detention is correspondingly high where the Government gave him no written explanation, no meaningful notice, no paperwork, and no intelligible basis for claiming that anything material had changed as required by 8 C.F.R. § 241.13(i)(2).

90. On the other side of the balance, the Government's interest in jailing Petitioner is minimal because it has already tested the less restrictive alternative and found it successful. Petitioner reported for years. He came to the very check-in where ICE arrested him. That history defeats any serious claim that detention is necessary to secure his appearance. And because lawful removal is not significantly likely in the reasonably foreseeable future, continued incarceration no longer serves the only permissible civil purpose for detention under § 1231.

91. The resulting detention is therefore both substantively and procedurally defective. It is substantively arbitrary because it is untethered to a realistic and lawful removal objective. It is procedurally deficient because Respondents deprived Petitioner of liberty without the basic explanation and process required where the Government is reversing years of supervision and imprisonment is the result. The burden is provided for in the regulations so no burden argument is cognizable.

CLAIMS FOR RELIEF

COUNT I — VIOLATION OF 8 U.S.C. § 1231

92. Petitioner realleges and incorporates the foregoing paragraphs.

93. Detention under 8 U.S.C. § 1231(a) is limited to a period reasonably necessary to effectuate removal.

94. Removal is not reasonably foreseeable in Petitioner's case because DHS cannot lawfully remove him due to his U Visa Deferred Action and Waitlist Status as such would be a *de facto* revocation of the status and protects him from removal.

95. Petitioner was detained well beyond the 90-day removal period and the six-month presumptively reasonable period identified in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

96. Continued detention therefore violates § 1231(a) as construed by *Zadvydas* and this Court should therefore rule the Respondents have violated this provision of the INA.

COUNT II — VIOLATION OF 8 U.S.C. § 1231

97. Petitioner realleges and incorporates the foregoing paragraphs.

98. Detention under 8 U.S.C. § 1231(a) is limited to a period reasonably necessary to effectuate removal.

99. Respondents are not ready to effectuate Petitioner's removal with no travel documents, no plan for removal, no authorization from Guatemala and no other indication of actual removal.

100. Continued detention therefore violates § 1231(a) as construed by *Zadvydas* and this Court should therefore rule the Respondents have violated this provision of the INA.

COUNT III — VIOLATION OF THE FIFTH AMENDMENT'S PROCEDURAL AND SUBSTANTIVE DUE PROCESS CLAUSE

101. Petitioner realleges and incorporates the foregoing paragraphs.
102. The Due Process Clause prohibits detention that is arbitrary, indefinite, or not reasonably related to its purpose. *Zadvydas*, 533 U.S. at 690.
103. Civil detention must be accompanied by adequate procedural protections and individualized findings of necessity. *Mathews v. Eldridge*, 424 U.S. 319 (1976).
104. Petitioner has not received the process due to him by 8 C.F.R. § 241.13 in DHS meeting its burden to show materially changed circumstances to revoke supervision.
105. Petitioner successfully complied with supervision, demonstrating that less restrictive means are adequate.
106. Continued detention without meaningful process violates the Fifth Amendment.

COUNT IV — VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT (5 U.S.C. § 701 et seq.)

107. Petitioner realleges and incorporates the foregoing paragraphs.
108. The APA prohibits agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

109. DHS's redetention of Petitioner after a period of successful supervision, without considering less restrictive alternatives or articulating a removal plan, is arbitrary and capricious.
110. DHS's failure to conduct custody reviews required under 8 C.F.R. § 241.4 and § 241.13 constitutes agency action unlawfully withheld or unreasonably delayed under § 706(1).
111. Detention that cannot serve the statutory purpose of removal violates *Zadvydas* and is not in accordance with law under the APA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court:

- a. Assume jurisdiction over this matter;
- b. Issue an order to show cause on an expeditious schedule given special circumstances of Petitioner's family within three (3) days as to why the writ should not issue;
- c. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a); the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A), 706(2)(C), 706(2)(D); and the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- d. Order Petitioner's immediate release and restrict re-detention without materially changed circumstances;
- e. Order the payment of EAJA fees; and

f. Grant any other further relief this Court deems just and proper.

Dated: April 9, 2026

Respectfully Submitted,

/s/ Hannah Brown

Hannah Brown (MN SBN 0400017)

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