

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0: 26-cv-03566-KMM-LIB

Jose C.D.,

Petitioner,

v.

**RESPONSE TO PETITION
FOR WRIT OF HABEAS
CORPUS**

Todd Blanche, *et al.*,

Respondents.

Respondents respectfully submit this brief pursuant to the Court's August 10, 2026 order requiring the Respondents to address the basis for Petitioner's continued detention.

BACKGROUND

Petitioner is a citizen and native of Mexico. Vandervart Decl. Ex. C ("I-213"). Petitioner makes no claim to U.S. citizenship or current lawful immigration status and is unlawfully present in the United States. *Id.* Petitioner entered the United States on or about July 8, 2013, at a location in Laredo, Texas that was not designated as a port of entry, and was not inspected or subsequently admitted or paroled by an Immigration Officer. *Id.* On July 7, 2013, the U.S. Border Patrol issued Petitioner an Expedited Removal. *Id.*; Vandervart Decl. Ex. E. On July 8, 2013, Petitioner was repatriated to Mexico. *Id.* Petitioner was provided notice that he was prohibited from "entering, attempting to enter, or being in the United States" for five years. Vandervart Decl. Ex. F ("I-296").

Petitioner reentered the United States sometime before September 15, 2017. ECF No. 1 ¶ 15. On June 4, 2018, the Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) encountered Petitioner at the Bloomington Police Department Jail. Vandervaat Decl. Ex. C. Petitioner was released before ERO could serve the Reinstatement of Removal Order, Form I871 to Petitioner. *Id.*

On June 4, 2018, the Bloomington Police Department had arrested Petitioner for Driving Under the Influence. Vandervaat Decl. ¶ 7. On September 17, 2018, the Hennepin County District Court convicted Petitioner for Driving Under the Influence and sentenced him to 30 days confinement. *Id.*

On July 21, 2025, the Richfield Police Department arrested Petitioner for Driving Under the Influence. Vandervaat Decl. ¶ 8. This case remains pending. *Id.*

On August 5, 2026, Petitioner was arrested in Meeker County, Minnesota, for Driving without an Ignition Interlock Device. Vandervaat Decl. ¶ 9. The case remains pending. *Id.*

On August 6, 2026, the Meeker County Jail released Petitioner to Immigration and Customs Enforcement (ICE) pursuant to a detainer. Vandervaat Decl. Ex. C. Deportation Officers placed Petitioner under administrative arrest at Meeker County Jail pursuant to a warrant and transported him to the Kandiyohi County Jail for booking. *Id.* Agents issued Petitioner Form I-871 to reinstate his prior removal order. Vandervaat Decl. ¶ 12.

ARGUMENT

Petitioner is subject to a previous order of removal. 8 U.S.C. 1231(a)(5). *See* Vandervaat Decl. Ex. D (“I-871”).

Habeas petitioners bear the burden of proving they are entitled to relief. *Copenhaver v. Bennett*, 355 F.2d 417, 422 (8th Cir. 1966); *Harris v. Tahash*, 353 F.2d 119, 123 (8th Cir. 1965). Petitioner bears the burden of proving his detention is unlawful by a preponderance of the evidence. *Jose J. O. E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025).

Petitioner is subject to mandatory detention under 8 U.S.C. § 1231(a)(2)(A), being subject to a removal order since 2013. Petitioner does not contest his detention under the statute. Instead, his pleas for relief are based on his application for a U-Visa, for which he was granted deferred action. Because his U-Visa application provides him with no substantive rights, his claims must be denied.

I. Petitioner is not entitled to relief as a class member of *ICWC v. Noem*

Petitioner first seeks relief as a class member of *Immigration Center for Women & Children v. Noem (ICWC)*, --- F.R.D. ---, No. 2:25-cv-09848, 2026 WL 1455004 (C.D. Cal. May 20, 2026). He claims that Respondents' current attempt to effect his removal violates agency policy under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). Because he cannot avail himself of relief under *ICWC*, his claim is without merit.

As is relevant to Petitioner, *ICWC* preliminarily certified a class of “[a]ll individuals to whom USCIS has granted deferred action based on a pending U or T visa petition and who, during the authorized period of deferred action, ICE detains, seeks to detain, or removed without providing notice and an opportunity to be heard regarding potential revocation of their deferred action status.” *Id.* at *47. As it applies to Petitioner, *ICWC* stayed a 2025 ICE policy that rescinded 2011 and 2021 policies that directed ICE to “refrain from immigration enforcement against persons with pending petitions for victim-based

benefits, including by releasing them from detention.”¹ *Id.* at *6, *47. The *ICWC* court also preliminarily stayed ICE’s “De Facto Revocation Policy, under which ICE does not honor grants of deferred action conferred by USCIS to individuals with pending petitions for U or T visas.” *Id.* at *47. See ECF No. 1 ¶ 69.

A similar claim has already been treated by a Court in this District in *Eliseo C. v. Blanche*, No. 26-cv-2282, ECF No. 12 (D. Minn. June 29, 2026), and Respondents will borrow liberally from that opinion. As with the Petitioner here, Eliseo sought relief as a class member of *ICWC*. The Court found that, whatever petitioner’s class status under *ICWC*, he could not avail himself of relief in the Eighth Circuit.

It is difficult to understand how the [*ICWC*] court’s decision to stay these ICE policies might entitle Eliseo to release or a bond hearing. First, although in certain circumstances agencies may be bound by their internal policies, the Eighth Circuit has explained that “[p]rosecutorial discretion has been treated differently than other types of agency discretion,” and it noted that “the special nature of prosecution is the reason that the *Accardi* doctrine has not been applied to criminal law enforcement policies and procedures.” *United States v. Lee*, 274 F.3d 485, 492–93 (8th Cir. 2001); see *United States v. Halls*, 40 F.3d 275, 278 n.1 (8th Cir. 1994) (stating the U.S. Department of Justice’s policy not to further prosecute someone already subject to a state prosecution was “an internal policy,” and therefore it was “not enforceable against the government”). Deferred action is ordinarily understood to be an act of “prosecutorial discretion.” See, e.g., *Rauda-Castillo v. Lynch*, 616 F. App’x 385, 388 (10th Cir. 2015); *Patel v. Att’y Gen. of U.S.*, 523 F. App’x 121, 123–24 (3d Cir. 2013) (per curiam); *Johnson v. INS*, 962 F.2d 574, 579 (7th Cir. 1992); *Domingo M.M. v. Shea*, No. 25-cv-2830 (LMP/ECW), slip op. at 5 n.3 (D. Minn. Aug. 1, 2025), ECF No. 24 (quoting New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014, 53015 n.3 (Sep. 17, 2007) (codified at 8 C.F.R. § 214.14)). Indeed, the 2011 and 2021 ICE policies themselves state that they provide guidance regarding ICE’s position with respect to its exercise of “prosecutorial discretion.” See ICE Policy Statement 10076.1, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs at 1

¹ The 2011 Policy was titled *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (ICE Policy 10076.1). The 2021 Policy was *Using a Victim-Centered Approach with Noncitizen Crime Victims* (ICE Directive 11005.3).

(Jun. 17, 2011), <https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf> (“This memorandum sets forth agency policy regarding the exercise of prosecutorial discretion in removal cases involving the victims and witnesses of crime”); ICE Directive 11005.3, Using a Victim-Centered Approach with Noncitizen Crime Victims at 1 (Dec. 2, 2021), https://www.ice.gov/doclib/foia/policy/11005.3_UsingVictimCenteredApproachNoncitizenVictims.pdf (“ICE will exercise prosecutorial discretion in appropriate circumstances to facilitate access to justice and victim-based immigration benefits by noncitizen crime victims.”). Under the Eighth Circuit’s rationale in *Lee*, the 2011 and 2021 policies do not provide a basis upon which ICE may legally be required to release Eliseo.

Id. at 16-18.

Other jurisdictional hurdles exist to applying the *ICWC* stay in this case. First, 8 U.S.C. § 1252(f)(1) bars *ICWC*’s class-wide stays and by extension invalidates Petitioner’s Motion. The provision “generally strips lower courts of ‘jurisdiction or authority’ to ‘enjoin or restrain the operation of’ certain provisions of the INA. The ordinary meaning of the terms ‘enjoin’ and ‘restrain’ bars...class-wide relief.” *Garland v. Aleman Gonzalez*, 596 U.S. 543, 543–44 (2022). The *ICWC* court was aware of this, noting in its opinion that § 1252(f)(1) “bars this district court from enjoining the operation of certain provisions of the INA with respect to anyone but an individual alien. Classwide injunctions are barred. Pointing to the phrase ‘[r]egardless of the nature of the action or claim,’ (Federal) Defendants argue that this prohibition on the district court issuing classwide injunctions bars *all* classwide relief that Plaintiffs seek here.” *ICWC* at *17. The *ICWC* court should have concluded its analysis there.

However, the court pressed on, believing it found a novel way to solve its jurisdictional problem: a stay under APA § 705 that supposedly provided a materially

identical form of classwide relief. *ICWC* at *47 (“Pursuant to 5 U.S.C. § 705, the Court hereby **STAYS** the 2025 Guidance. This stay applies in favor of All Individual Plaintiffs, the current and future clients of the Organizational Plaintiffs, and the members of all three Classes.”). The problem is that this materially functions as an injunction.

The *ICWC* court’s actions cannot survive *Garland v. Aleman Gonzalez*, which held that the prohibition under § 1252(f)(1) applies “[r]egardless of the nature of the action or claim,” and the word “restrain” as used in the statute means broadly “to check, hold back, or prevent.” 596 U.S. 543, 549–51 (2022); accord *Biden v. Texas*, 597 U.S. 785, 798 (2022).² In other words, Section 1252(f)(1)’s bar turns on what a particular order does, not what it is captioned. This is because, like the Constitution, the INA “deals with substance, not shadows.” *SFFA v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023); cf. *San Juan Cellular Tel. Co. v. PSC*, 967 F.2d 683, 684 (1st Cir. 1992) (Breyer, J.) (a declaratory judgment of unlawfulness “is equivalent to an injunction”).

The fundamental flaw with the *ICWC* court’s purported stay is that, ultimately, courts may not accomplish in two steps (a classwide stay plus follow-on injunctions) what Congress has forbidden them to do in one (a classwide injunction). Cf. *California v. Grace Brethren Church*, 457 U.S. 393, 408 (1982) (“[B]ecause there is little practical difference between injunctive and declaratory relief, we would be hard pressed to conclude that

² “[N]o court (Other than the Supreme Court) shall have jurisdiction or authority *to enjoin or restrain* the operation of the provisions of part IV of this subchapter.” 8 U.S.C. § 1252(f)(1) (italics added).

Congress intended to prohibit taxpayers from seeking one form of anticipatory relief against state tax officials in federal court, while permitting them to seek another.”).

Nken v. Holder, 556 U.S. 418, 428 (2009), confirms that the *ICWC* Order is an injunction in substance: An injunction “tells someone what to do or not to do,” whereas “a stay operates upon the judicial proceeding itself.” Here, the *ICWC* Order directs DHS’s conduct toward three classes, not a particular judicial proceeding. For this reason, the court lacked authority under § 1252(f)(1) to enter it, and Petitioner’s effort to obtain relief in this Court based on *ICWC* is unavailing.³

II. Petitioner’s pre-removal detention does not violate procedural due process

Petitioner claims his procedural due process rights are violated by his current detention. He bases this claim on an application of the test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). The claim is without merit.

Petitioner’s claim in due process lies in his alleged interest in deferred action, which under previous administrations’ prosecutorial discretion prevented his removal. ECF No. 1 ¶ 83. Because Petitioner can claim no special rights or privileges from prosecutorial discretion, his claim is without merit.

³ The Ninth Circuit authority the *ICWC* Court invoked—*Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 990 (9th Cir. 2025) (“§ 1252(f)(1) does not bar the district court’s stay pursuant to § 705 of the APA”), and *National TPS Alliance v. Noem*, 166 F.4th 739, 761 (9th Cir. 2026) (“Set aside relief under the APA is thus not barred by § 1252(f)(1)”—is distinguishable. Those orders set aside agency action and restored the status quo, whereas *ICWC*’s Order affirmatively reinstates a superseded policy and operationally dictates future enforcement.

Additionally, because Petitioner is subject to a removal order under 8 U.S.C. § 1231, he is not owed any kind of bond hearing or similar relief. The *Mathews* test has been employed in immigration proceedings primarily to determine whether a detainee is owed a bond hearing. *See, e.g., Rodriguez Diaz v. Garland*, 53 F.3d 1189, 1210 (9th Cir. 2022). The original *Mathews* test was, after all, applied to determine if an evidentiary hearing was necessary before depriving a man of his disability benefits. But the right to an individualized bond hearing under 8 U.S.C. § 1231 was explicitly denied by the Supreme Court in *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022). There, an alien subject to detention upon a removal order argued that due process requires bond hearings under § 1231(a). *Id.* at 579. The court rejected the alien's argument, stating that the statute was not ambiguous, and could not be read to require a bond hearing. *Id.* at 581-82.

Even applying the *Mathews* factors, it is clear Petitioner is not owed relief. The Government has an overwhelming interest in effecting final orders of removal. The interest is particularly strong when dealing with aliens like Petitioner, who have proven themselves dangers to public safety. Were this a case of detention under § 1225/1226, where a bond hearing might be feasible, the bond hearing itself might ameliorate such concerns. But where a bond hearing is not possible, the government's interest in protecting public safety is served only by applying § 1231(a). The due process requirements of § 1231(a) are treated below.

In sum, Petitioner is not entitled to a balancing test under *Mathews*. And even if he were, the Respondents' interest in his present detention under § 1231 is overwhelming.

III. Petitioner has no claim in substantive due process

Petitioner raises a claim in substantive due process. The claim has no merit.

Petitioner is subject to a reinstated final order of removal under 8 U.S.C. § 1231(a)(5), and detained under § 1231(a)(2). The Supreme Court has already conducted due process analysis for § 1231 detention in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Though Petitioner cites *Zadvydas* numerous times in his claim, he does not address the actual holding of the case.

Petitioner's present detention clearly meets the standards of *Zadvydas* and statute. Detention procedures for aliens ordered removed are governed by 8 U.S.C. § 1231(a). Detention is mandatory for 90 days after a removal order is issued. § 1231(a)(2)(A). Detention may continue and is presumptively reasonable for another 90 days where the Attorney General cannot effect removal. § 1231(a)(6); *Moallin v. Cangemi*, 427 F.Supp.2d 908, 915 (D. Minn. 2006). It is only after this six-month period that detention becomes presumptively unreasonable under the Fifth Amendment. *Zadvydas*, 533 U.S. at 701. At that point, an alien ordered removed can make a showing "that there is no significant likelihood of his removal in the reasonably foreseeable future," which if successful, raises a rebuttable presumption that detention has become unreasonable. *Id.*; see also *Moallin*, 427 F.Supp.2d at 915.

Petitioner makes no claim that he has been held anywhere close to the six-month bound of presumptive reasonability, though it is his burden to do so. The Court in *Zadvydas* made this clear: "After 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." *Id.* at

701(emphasis added). As a baseline matter, Petitioner has failed to establish any facts to suggest his detention violates 8 U.S.C. § 1231. Because Petitioner has failed to set forth any facts to suggest he has been detained beyond the presumptively reasonable period, he has no basis for relief.

Any claim that Petitioner is owed special rights in substantive due process owing to *ICWC* has been addressed above.

IV. Petitioner has no individualized claim in *Accardi*

Petitioner makes a final claim under the “*Accardi* doctrine.” *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). The claim is essentially the same as Petitioner’s argument under the APA.

“Prosecutorial discretion has been treated differently than other types of agency discretion,” and thus “the special nature of prosecution is the reason that the *Accardi* doctrine has not been applied to criminal law enforcement policies and procedures.” *Lee*, 274 F.3d at 485, 492–93. Respondents’ present policy clearly falls under this kind of prosecutorial discretion, and outside *Accardi* analysis.

EVIDENTIARY HEARING

Respondents believe the Court can resolve the Petition without an evidentiary hearing. The material facts necessary to decide this case are established by the Petition, the declaration submitted with Respondents’ response, and the attached immigration records. The remaining issues are legal ones.

CONCLUSION

All habeas relief must be denied.

Dated: August 14, 2026

DANIEL N. ROSEN
United States Attorney

s/ Derek Ganzhorn

BY DEREK GANZHORN
Special Asst. United States Attorney
Attorney ID Number 397468
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 431-5463
derek.w.ganzhorn@ice.dhs.gov