UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

BHARATBHAI PATEL, Petitioner, v. KRISTI NOEM, Secretary of U.S. Department of Homeland Security, TODD LYONS, Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement, PAMELA BONDI, Attorney General of the United States, FIELD DIRECTOR, San Antonio Field Office, U.S. Immigration and Customs Enforcement, Respondents.	Case No.

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Bharatbhai Patel is scheduled to be removed from the United States pursuant to a final order of removal tomorrow evening. The government cannot remove him, however, because he has valid deferred action pursuant to the bona fide determination for his pending U Visa application. *Guerra Leon v. Noem*, 2025 WL 4113562 (W.D. La. Oct. 30, 2025) ("This Court holds that without terminating Petitioner's deferred action status, Petitioner cannot be removed."). Accordingly, Mr. Patel petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to compel his release from custody because he cannot be removed.

JURISDICTION AND VENUE

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*

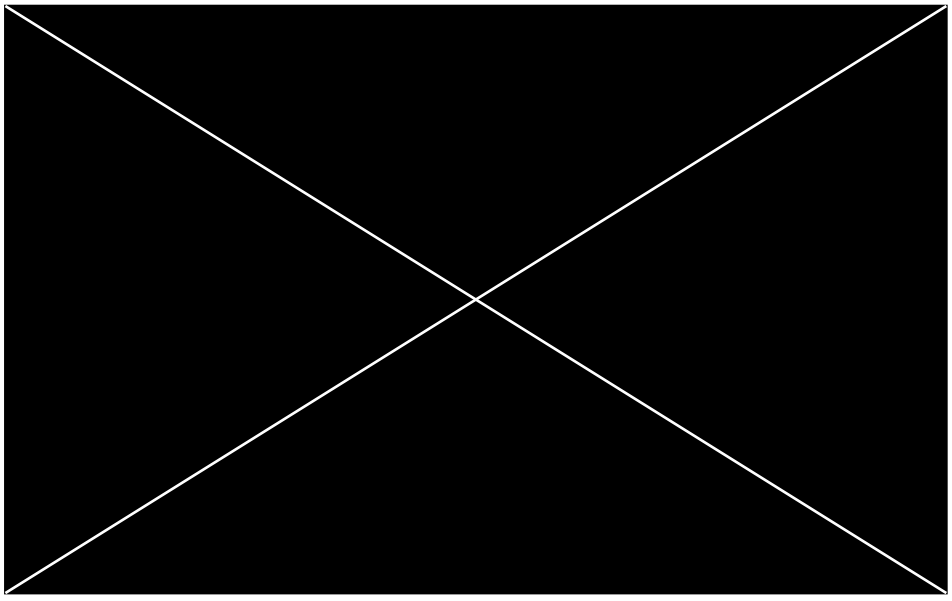
2. This court has subject matter jurisdiction under 28 U.S.C. §§ 2241 and 1331, and Article I, section 9, clause 2 of the United States Constitution.

3. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the All Writs Act, 28 U.S.C. § 1651, the Suspension Clause, Article I, Section 9, Clause 2 of the U.S. Constitution, and the INA, 8 U.S.C. § 1252(e)(2). This Court also has remedial authority under the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.

4. Venue is proper because Petitioner is in Respondents' custody within this District. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. *See* 28 U.S.C. § 1391(e).

PARTIES AND BACKGROUND

5. **Petitioner Bharatbhai Patel** is a native of India, who entered the United States in or about 1992, and was paroled into the United States on March 7, 1992 as an arriving alien. Mr. Patel is depicted below (arrow) with his U.S. Citizen family.



6. Mr. Patel was then placed in removal proceedings, under which he sought asylum relief, which was denied. Mr. Patel was ordered removed from the United States on February 27, 2012.

7. Mr. Patel has been married since 1983, and his wife is a United States Citizen. His wife filed an I-130 petition for Mr. Patel on March 26, 2025. This petition remains pending before United States Citizenship and Immigration Services ("USCIS"). *See* I-130 Petition Receipt, attached as **Exhibit 1**. Further, Mr. Patel has sought to adjust his status, and his Form I-485 remains pending with USCIS as well. Because Mr. Patel has been convicted of a crime (a nonviolent crime, bribery), he also has a pending I-601A waiver pending with USCIS.

8. Additionally, Mr. Patel has also received a Bona Fide Determination Notice from USCIS for a U Visa petition, which expires on June 2, 2029. *See* Determination Notice and Employment Authorization, attached as **Composite Exhibit 2**. Mr. Patel and his son were the victims of a robbery, which has increased his health problems and caused anxiety. *See* Mental Health Assessment, attached as **Exhibit 3**.

9. Mr. Patel, who is 62 years old, suffers from the following health concerns: Parkinson's disease, pernicious anemia, peripheral neuropathy, diabetes, and hyperlipidemia. *See* Medical Records, attached as **Exhibit 4**. According to his physician, he is required to take several medications each day including [redacted] *See id.* According to Mr. Patel's wife, Mr. Patel has suffered serious cognitive decline in recent months. *See* Declaration of Vidhyaben Patel ¶ 9, attached as **Exhibit 5**. He becomes disoriented, confused about his surroundings, and unbale to advocate for himself. *See id.* He also cannot independently keep track of medication intervals, identify medical warnings, or communicate symptoms to medical staff. *Id.* ¶ 10. Mr. Patel's wife

manages his medications and she has taken him to the hospital multiple times when he has observed medical complications and symptoms that Mr. Patel did not recognize because of his condition. *Id.* ¶ 13.

10. On or about November 28, 2025, Mr. Patel was detained by ICE while he was in the local field office for an appointment. According to Mrs. Patel, she is "extremely afraid that [her] husband will die in detention due to lack of timely medical attention, inability to monitor subtle neurological signs, interruption or medication schedules, or delayed insulin and B12 administration." *Id.* ¶ 19.

11. Mr. Patel sought habeas relief while he was detained in the Knox County Jail based on his serious health concerns, which petition was denied.

12. Now months later, Mr. Patel has been told that he is to be removed from the United States despite his valid and existing deferred action under his pending I-918. Mr. Patel was also told that he has been scheduled for his I-485 interview next month. *See* Interview Notice, attached as **Exhibit 6**.

13. Mr. Patel is presently detained at the Port Isabel Service Processing Center operated by U.S. Immigration and Customs Enforcement ("ICE"). Yesterday, Mr. Patel was at the Alexandria Staging Facility in the Western District of Louisiana. Mr. Patel filed a petition and emergency TRO there, but because he could not obtain immediate relief from the court, he refiles in this court for immediate relief from unlawful removal.

14. **Respondent Kristi Noem** is the Secretary of U.S. Department of Homeland Security ("DHS"). She is sued in her official capacity. In that capacity, she is charged with the administration and enforcement of the INA, and oversees DHS.

15. **Respondent Todd M. Lyons** is Senior Official Performing the Duties of Director of ICE. ICE is the federal agency responsible for custody decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, removal, and custody status of non-citizens. As acting director of ICE, Respondent Lyons has authority over its actions, including Petitioner's detention. He is sued in his official capacity.

16. **Respondent Pamela Bondi** is the Attorney General of the United States and the senior official of the U.S. Department of Justice. She is sued in her official capacity. In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review, which administers the immigration courts and the BIA. Respondent Bondi is responsible for decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. Therefore, she is also Petitioner's legal custodian.

17. **Respondent Field Office Director** is the director of ICE's San Antonio Field Office, which is responsible for arrest, detention, custody, and removal of noncitizens in Texas, including at the **Port Isabel Service Processing Center** where Petitioner is currently located.

LEGAL FRAMEWORK

18. District courts have the power to grant writs of habeas corpus. 28 U.S.C. § 2241(a). The Constitution guarantees that the writ of habeas corpus is available to every individual detained within the United States. *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const. Art. I, § 9, cl. 2); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody.").

19. A district court's power includes jurisdiction to hear habeas challenges to immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Indeed, noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

I. This Court has jurisdiction to hear this petition.

20. When considering whether a federal court has jurisdiction to hear a petition for a writ of habeas corpus, the United States Supreme Court has explained that 8 U.S.C. § 1252(g) relates to "three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). "By its explicit terms, § 1252(g) strips courts of subject-matter jurisdiction to review claims 'arising from' a decision or action to execute a removal order against an alien." *Westley v. Harper*, 25-cv-229, 2025 WL 592788, at *4 (E.D. La. Feb. 24, 2025) (citation modified).

21. Section 1252(g) has limits, however. *See Reno*, 525 U.S. at 482 (noting that statute does not "cover the universe of deportation claims"). "There are of course many other decisions or actions that may be part of the deportation process"—and outside of the statute's purview. *Id.* The statute "does not bar courts from reviewing an alien detention order, because such an order, while intimately related to efforts to deport, is not itself a decision to execute removal orders" *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (citation modified). Courts must determine whether the requested relief seeks falls within the ambit of § 1252(g) and is "precluded from judicial review." *Foster v. Townsley*, 243 F.3d 210, 215 (5th Cir. 2001).

22. Here, Mr. Patel is enforcing his constitutional right to due process in the context of his removal order, not its legitimacy. As explained below, Mr. Patel has deferred action. He

therefore cannot be removed while that status is in effect. *Guerra Leon*, 2025 WL 4113562, at *2 (court had jurisdiction to grant habeas relief where petitioner had deferred action).

II. Mr. Patel cannot be removed while he maintains deferred action.

23. The operative factor precluding Mr. Patel's removal is that his deferred action, as set forth in the bona fide determination of his U visa application, *see* Ex. 2, remains in effect until June 2, 2029.[1] Prior to that date, Mr. Patel is not removable.

24. In *Guerra Leon*, the court looked to the decision in *Primero v. Mattivelo* to conclude that deferred action prevented removal. 2025 WL 1899115 (D. Mass. July 9, 2025). There, the court determined that the petitioner's valid grant of deferred action prevented removal. *Id.* at *4 ("Respondents do not suggest that ICE routinely removes individuals with active grants of deferred action from the United States").

25. As the court in *Guerra Leon* held: "Petitioner may still be subject to removal in the future if his deferred action status is terminated before its expiration or if it expires and is not renewed. Respondents, however, have not terminated or sought to terminate Petitioner's deferred action status. This makes Petitioner non-removable while his deferred action status remains in effect." *Guerra Leon*, 2025 WL 4113562, at *3.

26. Thus, while Mr. Patel's deferred action remains pending, he is non-removable.

[1] According to USCIS's Policy Manual: "Once USCIS has determined that a petitioner present in the United States has a bona fide petition and merits a favorable exercise of discretion, and therefore may receive a BFD EAD, USCIS issues a notice to inform the petitioner of the decision. Such petitioners who have already filed a Form I-765 under either of the EAD classifications noted above then receive an EAD and a grant of deferred action valid for **4 years**. Petitioners who must file a new Form I-765 after receiving the BFD notice from USCIS receive employment authorization and deferred action valid for 4 years once USCIS finishes adjudicating the Form I-765." (emphasis supplied), https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5.

COUNT I
Violation of Fifth Amendment Right to Due Process
(against all Respondents)

Petitioner re-incorporates and re-alleges paragraphs 1-27 above as if fully set forth herein.

27. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. While certain constitutional protections do not extend outside the "geographic borders" of the United States, "legal circumstances change" as soon as a noncitizen "enters the country." *Id.*; *see also A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) ("'[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.'") (quoting Trump v. J.G.G., 145 S. Ct. 1003, 1006 (2025) (per curiam)).

28. To determine whether civil detention violates a detainee's due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts consider (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. See id. at 335.

29. Here, all three factors favor Mr. Patel. He has a significant private interest at stake. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (freedom from physical detention is "the most elemental of liberty interests"); *see also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."). Mr. Patel is experiencing all the

deprivations that come with physical detention, including separation from his family and access to his medications and medical providers during the last 80 days of his detention.

30. There is an enormous risk of erroneous deprivation of rights. Respondents' plan to imminently remove Mr. Patel from the country creates the immediate risk of erroneous deprivation because they may not remove Mr. Patel while his deferred action remains in place.

31. Finally, the government's interest here is minimal, where Mr. Patel has ongoing immigration proceedings, including an upcoming interview for his pending I-485 application. Should Mr. Patel lose deferred action status, the government could seek to remove him at that stage.

PRAYER FOR RELIEF

Petitioner Bharatbhai Patel respectfully requests that the Court:

A. Retain jurisdiction over this action;

B. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted pursuant to 28 U.S.C. § 2243;

C. Declare that Mr. Patel's detention violates the Due Process Clause of the Fifth Amendment;

D. Issue a Writ ordering Respondents to release Mr. Patel from custody;

E. Award Petitioner attorneys' fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

F. Grant all other relief that the Court deems just and proper.

Dated: February 21, 2026

/s/ James M. Slater

James M. Slater (Fed. Bar # 3881765)
Slater Legal PLLC
2296 Henderson Mill Rd NE #116

Atlanta, Georgia 30345
james@slater.legal
Tel. (404) 458-7283

Lucy Lu (*pro hac vice* forthcoming)
aiLegal Law
3400 Peachtree Road N.E., Suite 1100
Atlanta, Georgia 30326
info@ailegallaw.com
Tel. (404) 343-7166

Attorneys for Petitioner Bharatbhai Patel

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I submit this verification on behalf of Petitioner Bharatbhai Patel because I am the Petitioner's attorney. I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: February 21, 2026

/s/ James M. Slater
James M. Slater