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 MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Petitioner Bharatbhai Patel, who was just flown to Port Isabel Service Processing Center in this District and Division, 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."). Because time is of the essence, Petitioner files this emergency motion for a temporary restraining order and preliminary injunction to permit his release from detention while his deferred action remains in effect.

BACKGROUND

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 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. That removal order forms the basis for Mr. Patel's current detention, which occurred well beyond the post-removal period.

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* Pet. at Ex. 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, he also has a pending I-601A waiver pending with USCIS. Additionally, Mr. Patel has also received a Bona Fide Determination Notice from USCIS for a U Visa petition. *See id*. at Ex. 2. Mr. Patel and his son were the victims of a robbery, which has increased his health problems and caused anxiety. *See id.* at Ex. 3.

Mr. Patel, who is 62 years old, suffers from the following health concerns: Parkinson's disease, pernicious anemia, peripheral neuropathy, diabetes, and hyperlipidemia. *See id.* at Ex. 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 id.* at Ex. 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.

On or about November 28, 2025, Mr. Patel was detained by ICE while he was in the local field office for an appointment. Now months later, Mr. Patel has been told that he is to be removed from the United States *tomorrow* 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* Pet. at Ex. 6.

ARGUMENT

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."). 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.

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).

Section 1252(g) has its 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). Therefore, 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).

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. A TRO and/or preliminary injunction is appropriate.

A TRO is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A party seeking a temporary restraining order must show: (1) a substantial likelihood of success on the merits; (2) a substantial threat of immediate and irreparable harm for which it has no adequate remedy at law; (3) that greater injury will result from denying the temporary

restraining order than if it is granted; and (4) that a temporary restraining order will not disserve the public interest. *See id.*

A noncitizen's post-removal-period detention under 8 U.S.C. § 1231, like here for Mr. Patel, is limited to a period reasonably necessary to bring about that noncitizen's removal from the United States. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has found that once the removal period begins, six months is a reasonably necessary period to remove the noncitizen. *See id.* at 701. After six months, if the noncitizen provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, then the government must respond with evidence sufficient to rebut that showing. *Id.* Regardless of whether removal is foreseeable, detention would still be appropriate where there is clear and convincing evidence that the alien poses a danger to the community. *Id.* at 691.

A. Mr. Patel is likely to succeed on the merits.

Mr. Patel is likely to succeed on the merits of his habeas claim due to his deferred action status which remains in effect until June 2, 2029. *See* Pet. at Ex. 2.

In *Guerra Leon*, Judge Doughty 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").

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. Thus, while Mr. Patel's deferred action remains pending, he is non-removable and therefore likely to succeed on the merits.

B. Mr. Patel will face irreparable harm absent a TRO.

Mr. Patel faces continued detention and separation from his family and medical providers absent relief from the Court. Here, his post-removal period ended more than a decade ago, and he has been detained for 84 days since being arrested in November 2025. While Mr. Patel has a felony conviction, he has pending relief with USCIS, including an upcoming interview for his application to adjust his status to permanent resident.

This cannot be overstated: *Zadvydas* should not be read to stand for the proposition that the removal period begins with detention and that any detention under six months is constitutional. Once a detained person has, as here, provided "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future," the government must rebut that showing, or the person be released. *Zadvydas*, 533 U.S. at 701. While Mr. Patel's removal period has long ended, he has also, demonstrated "good reason" that his removal in the reasonably foreseeable future is unlikely. *Id.* That is, he cannot be removed while he has deferred action.

C. The balance of equities and public interest favor the relief sought.

Finally, Mr. Patel must demonstrate that the threatened injury and the deprivation of his constitutionally protected rights outweigh the injury to Respondents if the injunction is granted. *Kostak v. Trump*, 2025 WL 2472136 at *4 (W.D. La. Aug. 27, 2025). The equities weigh in favor of release based on Mr. Patel's deferred action status. *Guerra Leon*, 2025 WL 4113562, at *4 (granting release based on deferred action). Mr. Patel's detention (and imminent removal) far outweighs any injury to Respondents. Mr. Patel is elderly and infirm with Parkinson's disease and other conditions and would return to his U.S. Citizen family for care upon release. He also

has upcoming interview with USCIS to adjudicate his pending I-485. He is by no means a flight risk or a danger to the community.

Granting relief also serves the public interest by ensuring that the government adheres to its own laws and by preventing the public interest from being undermined through unnecessary detention.

CONCLUSION

For all these reasons, Petitioner Bharatbhai Patel respectfully requests that the Court grant this motion and order Respondents to release him from civil detention immediately.

Dated: February 21, 2026

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this motion will be immediately served on the government at usalaw.emergencyfilings@usdoj.gov and on ICE ERO via email.

/s/ James M. Slater
James M. Slater