UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

BHARATBHAI PATEL, *Petitioner*,	§	
	§	CIVIL ACTION NO. 1:26-cv-00211
v.	§	
KRISTI NOEM, *et al*., *Respondents*.	§	

RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS or ALTERNATIVELY FOR SUMMARY JUDGMENT

Respondents ("the Government")[1] hereby respond to Petitioner's Petition for Writ of Habeas Corpus (Dkt. No. 1) and to dismiss the Petition for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure ("FRCP"). Alternatively, respondents move for summary judgment.

SUMMARY OF ARGUMENT

Petitioner is an alien who entered the United States on a fraudulent passport, has been convicted of conspiracy to bribe a federal employee, and has a final order of removal from 2012. The Court does not have jurisdiction to consider the Petition under 8 U.S.C. § 1252(g) because Petitioner is asking the Court to interfere with the Government's execution of his removal order. Notably, Petitioner's cause of action is identical to the plaintiff Florentina Cardoso in *Cardoso v. Reno*, who was "subject to a removal order entered in absentia and [sought] an adjustment in status

[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

so that she may avoid that order." 216 F.3d 512, 516 (5th Cir. 2000). Likewise, Petitioner is seeking to avoid his final order of removal by claiming a liberty interest in his continued presence in the United States until he is granted an immigration benefit. **Dkt. No. 1** at 3-4, 8-9. An alien, however, does not have a liberty interest in an immigration benefit, which is a matter of sovereign discretion rather than an individual right. *See Department of State v. Munoz*, 602 U.S. 889 (2024).

Additionally, Petitioner's argument that he cannot be removed while he has deferred action is untenable. Deferred action is form of prosecutorial discretion. *See Reno v. AADC*, 525 U.S. 471 (1999). The Executive Branch retains prosecutorial discretion to determine whether and when it will remove aliens. *United States v. Texas*, 599 U.S. 670 (2023). Because the Government is seeking to remove Petitioner, and the enforcement decision to remove Petitioner is an Executive prerogative, 8 U.S.C. § 1252(g) deprives the Court of jurisdiction to consider Petitioner's cause of action. *Reno v. AADC*, 525 U.S. at 485. As such, the Petition should be dismissed under Rule 12(b)(1) for lack of jurisdiction.

BACKGROUND

Petitioner entered the United States on or about March 7, 1992, using another individual's passport.[2] *See* **Gov't Ex. 1**. On May 13, 1992, an Immigration Judge administratively closed Petitioner's exclusion proceedings because Petitioner did not appear for his proceedings. *See* **Gov't Ex. 2**. On or about July 14, 2011, Petitioner was convicted in the United States District Court for the District of New Jersey for Conspiracy to Bribe an Employee of the United States and was sentenced to a term of imprisonment of eight months. *See* **Gov't Ex. 3**. At some point in 2011, Petitioner's removal proceedings were reopened. On February 27, 2012, an Immigration Judge

[2] "When determining issues of subject matter jurisdiction, the courts may consider outside matter attached to a motion to dismiss without first converting it into a motion for summary judgment." *State of Ala. ex rel. Baxley v. Woody*, 473 F.2d 10, 12 (5th Cir. 1973).

denied Petitioner's applications for relief and ordered him removed to India *in absentia* after Petitioner failed to appear for his removal hearing. *See* **Gov't Ex. 4**. Petitioner did not appeal the decision of the Immigration Judge, so his order of removal is administratively final. 8 C.F.R. § 1241.1. On November 28, 2025, ICE issued Petitioner a Notice of Revocation of Release, thereby revoking Petitioner's Order of Supervision. *See* **Gov't Ex. 5**.

STANDARD OF REVIEW

Because federal courts are of limited jurisdiction, Rule 12(b)(1) requires dismissal of a claim if the court lacks subject matter jurisdiction. *See Kokkenen v. Guardian Life Ins. Co. of Am*., 511 U.S. 375 (1994); *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365 (1978). A claim must be dismissed if the court lacks subject matter jurisdiction to entertain it. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998). The party invoking federal jurisdiction bears the burden of proving its existence by a preponderance of the evidence and outside evidence may be considered. *Id*.; *Patterson v. Weinberger*, 644 F.2d 521 (5th Cir. 1981); *Stanley v. Central Intelligence Agency*, 639 F.2d 1146 (5th Cir. 1981).

JURISDICTION

Petitioner contends that § 1252(g) does not strip the Court of jurisdiction, and the Court may consider his claim that he "is enforcing his constitutional right to due process in the context of his removal order, not its legitimacy… has deferred action … [and] therefore cannot be removed while that status is in effect." **Dkt. No. 1** at 6-7. Contrary to Petitioner's contentions, the Court lacks jurisdiction to review Petitioner's claim under 8 U.S.C. § 1252(g) because the decision to remove Petitioner, notwithstanding deferred action, is inextricably intertwined with ICE's unreviewable authority to execute a final order of removal.

Congress explicitly removed jurisdiction from the district courts "to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to … execute removal orders against any alien under this Act." 8 U.S.C. § 1252(g). The purpose of § 1252(g) is "to protect the discretionary decisions of immigration authorities in matters related to removal and deportation." *Duarte v. Mayorkas*, 27 F.4th 1044, 1055 (5th Cir. 2022); *see also Alvidres-Reyes v. Reno*, 180 F.3d 199, 201 (5th Cir. 1999) ("The Congressional aim of § 1252(g) is to protect from judicial intervention the Attorney General's long-established discretion to decide whether and when to prosecute or adjudicate removal proceedings or to execute removal orders."). The Court must "look beyond the pleadings and focus on what relief is ultimately being sought to determine whether jurisdiction is appropriate." *Duarte*, 27 F.4th at 1070 (Willett, D., concurring in part and dissenting in part).

The Petition makes two primary claims: (1) that he has a liberty interest in his continued presence in the United States until he is granted an immigration benefit and (2) that the Government cannot remove him while he has deferred action. **Dkt. No. 1** at 6-9. The Court lacks jurisdiction to entertain both claims under § 1252(g).

Petitioner's first claim seeks to prevent the Government from executing his final order of removal so that he can pursue lawful status in the United States. The Fifth Circuit has already held that there is no jurisdiction to entertain this claim. *See Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (finding that § 1252(g) applies because [r]egardless of how she describes her claim, [the appellant] undeniably seeks to prevent the Attorney General from executing a removal order."). Petitioner's facts are nearly identical to the plaintiff Florentina Cardoso in *Cardoso v. Reno*. In that case, Florentina Cardoso was "subject to a removal order entered in absentia and [sought] an adjustment in status so that she may avoid that order." *Id.* Similarly, Petitioner is subject to a final

order of removal and seeks to compel the Government to release him from custody so that he can pursue adjustment of status and await adjudication of his pending U Visa application. **Dkt. No. 1** at 3, 8-9. Under § 1252(g), there is no jurisdiction to review Petitioner's claim because he is seeking to interfere with his final order of removal by claiming entitlement to an immigration benefit so that he may avoid execution of his removal order.

Jurisdiction is also barred by § 1252(g) to consider Petitioner's second claim that the Government cannot remove him while he has deferred action. Deferred action in the immigration context has long been considered a form of prosecutorial discretion in which the Executive Branch may choose to "institute proceedings, terminate proceedings, or decline to execute a final order of deportation." *Reno v. AADC*, 525 U.S. at 485. In line with these principles, the Executive Branch "also retains discretion over whether to remove a noncitizen from the United States." *United States v. Texas*, 599 U.S. at 679. "Declining to prosecute does not transform presence deemed unlawful by Congress into lawful presence and confer eligibility for otherwise unavailable benefits based on that change." *Texas v. United States*, 50 F.4th 498, 526 (5th Cir. 2022) (quoting *Texas v. United States*, 809 F.3d 134, 167 (5th Cir. 2015)).

Petitioner's deferred action stems from the Government's exercise of prosecutorial discretion, and any decision by the Government to change course, by choosing to ultimately execute a removal order, is protected by 8 U.S.C. § 1252(g). As Justice Scalia aptly stated in *Reno v. AADC*, "Section 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." 525 U.S. at 485. The Government is choosing to execute Petitioner's final order of removal, which it is permitted to do as matter of prosecutorial discretion, and the Court does not have jurisdiction to review this decision.

For these reasons, the Court should dismiss the instant Petition for lack of subject matter jurisdiction under Rule 12(b)(1) of the FRCP or alternatively grant summary judgment. In either instance the temporary restraining order should be vacated.

Dated: February 24, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 24, 2026, the foregoing was filed and served through the Court's CM/ECF system.

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