UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

BHARATBHAI PATEL, Petitioner, v. KRISTI NOEM, et al., Respondents.	Case No. 1:26-cv-211

PETITIONER'S RESPONSE IN OPPOSITION TO GOVERNMENT'S MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

Petitioner Bharatbhai Patel, through his counsel, hereby responds to the government's supplemental briefing and motion to dissolve the Court's temporary restraining order. (Dkt. No. 13). Simply put, the government misconstrues the Court's injunction maintaining the status quo pending a resolution of the habeas petition as an order granting stay of removal. In support of its contention, the government relies exclusively on *Imran v. Harper*, 2026 WL 93131 (5th Cir. Jan. 13, 2026) (per curiam). There, in an unpublished decision, a panel of the Fifth Circuit concluded several things, two of which are important here.

First, the panel concluded that district courts possess jurisdiction to hear due process claims under section 2241, because "district courts have subject-matter jurisdiction to review § 2241 petitions challenging the lawfulness of a noncitizen's detention, …" *Id.* at *1 (citing *Demore v. Kim*, 538 U.S. 510, 517 (2003)). That is exactly the posture of this proceeding. Mr. Patel challenges the government's decision to detain him while he has deferred action through his bona fide determination ("BFD") under his pending U visa application and based on the government's failure to follow the law in revoking his Order of Supervision without the proper

process. *Maldonado v. Noem*, 2025 WL 1593133, at *2 (S.D. Tex. June 5, 2025) (petitioner's "BFD and deferred action status arguably rendered him presumptively ineligible for removal under 8 U.S.C. § 1184(p)(6)"); *Villanueva v. Tate*, 801 F. Supp. 3d 689, 699-700 (S.D. Tex. 2025) ("In the absence of some evidence showing that [petitioner's] Order of Supervision was lawfully revoked by someone with the authority to do so and for a reason lawfully permitted, the government has failed to show that it afforded [petitioner] with due process in connection with the purported revocation of his Order of Supervision."). *Compare* Dkt. No. 11-5 (signed by "AFOD") *with* 8 CFR § 241.4(l)(2) (limiting revocation decisions to two specific government officials).

Second, the panel in *Imran* concludes that the petitioner's "request for a stay of removal" was in essence a challenge to the removal order, for which there is no jurisdiction under section 1252(g). *See Imran*, 2026 WL 93131, at *1 (collecting cases). The government also argued in its response to the petition that this case was factually analogous to *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) on the same basis. In *Cardoso*, the Fifth Circuit concluded that the court lacked jurisdiction to stay removal while the petitioner sought to adjust status.

Here, Mr. Patel does not seek an order staying removal, nor did this Court grant such an order. The petition instead addresses Mr. Patel's status and pending applications to demonstrate that the government violated his due process rights in detaining him while he has protection and without adequate process, and that his personal circumstances (pending applications and health conditions) militate towards a finding of irreparable harm and a balance of the equities in Mr. Patel's favor. *Maldonado*, 2025 WL 1593133, at *3 (public interest favors preserving due process, family unity, and congressional intent to protect crime victims under the U visa program).

But, nevertheless, following the preliminary injunction hearing, the government asks the Court to permit it to take steps to moot the relief Mr. Patel seeks. The Court has already ruled that such temporary injunctive relief is simply necessary to have the matter fully heard. *See* Temporary Restraining Order, Dkt No. 4 (citing *Nieto-Ramirez v. Holder*, 583 F. App'x 330, 331 (5th Cir. 2014)). The government offers no real response to that. This is not case like *Imran* where a petitioner is seeking a stay of removal. The Court's reasonable and narrowly tailored injunction is necessary for a full merits decision, which may otherwise be mooted by Mr. Patel's removal in the interim.

WHEREFORE, Petitioner Bharathbai Patel respectfully requests that the Court deny the government's motion to dissolve the temporary injunction.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this motion will be served on all counsel of record via CM/ECF.

/s/ James M. Slater
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