

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

AJAYKUMAR PATEL)

(A ))

Petitioner,)

v.)

Case No. 26-cv-804

MARKWAYNE MULLIN, Secretary, U.S.)
Department of Homeland Security; SAMUEL)
OLSON, Field Office Director, Chicago Field)
Office, U.S. Immigration & Customs Enforcement;)
and GARY STOLZER, Sheriff, Ste. Genevieve)
County.)

Respondents.)

PETITION FOR WRIT OF HABEAS CORPUS AND
COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF

The Petitioner, AJAYKUMAR PATEL, by and through his own and proper person and through his attorneys, BRITTNI RIVERA, of KRIEZELMAN BURTON & ASSOCIATES, LLC, petitions this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention during his pending removal proceeding

Introduction

1. Petitioner is presently being detained by U.S. Immigration and Customs Enforcement ("ICE") at the Ste. Genevieve County Detention Center in Ste. Genevieve, Missouri.
2. Petitioner is a native and citizen of India. He has been present in the United States since 2011. He has not left the United States since.
3. Petitioner was ordered removed by the Harlingen Immigration Court in 2011. A motion to reopen his removal proceedings is currently pending with the Harlingen Court. *See*

Exhibit A.

4. Petitioner is married and has one U.S. citizen child, and another one on the way.
5. Petitioner's detention is a substantial deprivation and burden that puts Petitioner and his family at risk without his support.
6. Petitioner's detention became unlawful on May 19, 2026, when he was taken into custody with ICE/ERO officials while attending a biometrics appointment for his work permit.
7. Petitioner has a pending U nonimmigrant visa application and is currently in deferred action status, meaning, the United States cannot remove him at this time. *See* Exhibit B.
8. Petitioner's continued detention is an unlawful violation of due process and is in violation of the provisions of the Immigration & Nationality Act.
9. Petitioner respectfully asks this Court to issue a temporary restraining order directing Petitioner's release and enjoining Respondent's continued detention of Petitioner.
10. In the alternative, Petitioner respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

Jurisdiction and Venue

11. The action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. § 1101 et seq., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.
12. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the "Suspension Clause"), as Petitioner is presently subject to immediate detention and custody under color of

authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.

13. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.
14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgments Act, 28 U.S.C. § 2201 et seq., 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1361 (mandamus), and the All Writs Act, 28 USC § 1651.
15. Venue is proper in the Eastern District of Missouri because Petitioner is presently detained by Respondents at Broadview Processing Center – which is located within the Eastern District. 28 U.S.C. § 1391(b), (e)(1).

Parties

16. Petitioner AJAYKUMAR PATEL is a native and citizen of India. Petitioner is presently detained at Ste. Genevieve County Detention Center in Ste. Genevieve, Missouri.
17. Respondent SAMUEL OLSON is being sued in his official capacity only, as the Acting Field Office Director of the Chicago Field Office of ICE. As such, he is charged with the detention and removal of aliens which fall under the jurisdiction of the Chicago Field Office. He is the Department of Homeland Security's designate for all matters concerning the detention and removal of noncitizens within the Chicago Area of Responsibility, which includes the state of Indiana.
18. Respondent MARKWAYNE MULLIN is being sued in his official capacity only, as Secretary of Homeland Security. Pursuant to the Homeland Security Act of 2002, Pub.

L. 107-296, Respondent MULLIN, through his delegates, has broad authority over the operation and enforcement of immigration laws.

19. Respondent GARY STOLZER, Sheriff of Ste. Genevieve County, Missouri, is being sued in his official capacity only. As County Sheriff, he is custodian of Ste. Genevieve County Detention Center, and all individuals detained therein, where Petitioner is presently being detained. He is, therefore, Petitioner's immediate custodian.

Custody

20. Petitioner AJAYKUMAR PATEL is being unlawfully detained by ICE and he is not likely to be removed in the reasonably foreseeable future.

Factual and Procedural Background

21. Petitioner AJAYKUMAR PATEL is a native and citizen of India. He has been residing in the United States since 2011. Petitioner was ordered removed from the Harlingen Immigration Court in 2011.
22. Petitioner is the primary financial support for his family, including his wife and U.S. Citizen child. Petitioner's wife is pregnant with their second child.
23. Petitioner was detained by ICE/ERO on May 19, 2026 while attending a biometrics appointment.
24. Petitioner does not have a criminal record in the United States aside from some traffic violations.
25. In 2022, Petitioner received deferred action status in connection with a pending U-Visa petition, and which is valid during the pendency of the U-Visa petition. *See* Exhibit B.
26. Undersigned counsel brought to the attention of ICE/ERO that Petitioner was in deferred action status, and therefore could not be removed from the United States. As

a result, Kansas City ICE/ERO sent counsel an email stating, “even if USCIS has made a BFD and/or granted deferred action, ICE’s position is that we can take enforcement action. There is no legal prohibition against enforcement action.” *See* Exhibit C.

Legal Framework

Due Process Clause

27. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “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.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
28. “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In this case, to determine the due process to be afforded to Petitioner, the Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government’s interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.
29. The Immigration and Nationality Act is codified at Title 8 of the United States Code, Section 1221 *et seq.*, and controls the United States Government’s authority to detain noncitizens during their removal proceedings.

30. After a noncitizen has been ordered removed, 8 U.S.C. § 1231(a)(1) provides a default ninety-day period within which to deport him. Certain exceptions allow the federal government to detain the noncitizen beyond the ninety-day removal period. 8 U.S.C. § 1231(a)(6). Even if one of those exceptions apply, however, noncitizens who have been ordered removed may not be held indefinitely. *Zadvydas*, 533 U.S. at 689. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699. If a person is detained for longer than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that non-citizen’s due process right to liberty. *Id.* at 701.
31. The Court’s ruling in *Zadvydas* is rooted in due process’s requirement that there be “adequate procedural protections” to ensure that the government’s asserted justification for a noncitizen’s physical confinement “outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.
32. The first justification of preventing flight, however, is “by definition . . . weak or nonexistent where removal seems a remote possibility.” *Zadvydas*, 533 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight prevention justification for detention accordingly is “no longer practically attainable, detention no longer ‘bears [a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* (quoting *Jackson v. Indiana*, 406

U.S. 715, 738 (1972)). As for the second justification of protecting the community, “preventive detention based on dangerousness” is permitted “only when limited to especially dangerous individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at 690–91.

33. Thus, under *Zadvydas*, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–700. If removal is reasonably foreseeable, “the habeas court should consider the risk of the [noncitizen’s] committing further crimes as a factor potentially justifying the confinement within that reasonable removal period.” *Id.* at 700.
34. At a minimum, detention is unconstitutional and not authorized by statute when it exceeds six months and deportation is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701 (stating that “Congress previously doubted the constitutionality of detention for more than six months” and, therefore, requiring the opportunity for release when deportation is not reasonably foreseeable and detention exceeds six months); *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005).
35. The Code of Federal Regulations establishes procedures that govern when a noncitizen subject to a removal order has been detained past the expiration of the removal period and shows that there is no significant likelihood that he will be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(a).
36. If ICE determines that there is no significant likelihood that the noncitizen will be removed in the reasonably foreseeable future, and that no changed or special circumstances justify continued detention, then ICE must release the noncitizen subject to appropriate conditions of supervised release. 8 C.F.R. § 241.13(g).

37. After the noncitizen has been released, section 241.13(i) governs any revocation of the noncitizen's supervised release. Under section 241.13, "release may be revoked for one of two reasons, violating the conditions of release or 'if, on account of changed circumstances, the Service determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.'" 8 C.F.R. § 241.13(i).
38. The regulations set out a procedure where the Petitioner will be notified of the reasons for revocation of his release, including an initial informal interview, submission of evidence, and an evaluation of the contested facts relevant to the revocation. 8 C.F.R. § 241.13(i)(3).
39. There also has been no presentation of any special circumstances, *see* CFR § 241.14, set forth by ICE ERO to detain Petitioner.
40. The Supreme Court described deferred action in *Reno v. Am.-Arab Anti-Discrimination Comm.*, as meaning "no action will thereafter be taken to proceed against an apparently deportable alien." 525 U.S. 471, 484 (1999). Deferred action is, by its very nature, protection from removal. *Velasco Gomez v. Scott*, No. 25-cv-0522-JLR-BAT, 2025 WL 1726465 (W.D. Wash. June 20, 2025). Courts have held that a grant of "deferred action" is an "affirmative immigration benefit" that effectively makes it unlawful for a removal order to be executed while the alien has deferred action status. *Ayala v. Bondi*, No. 2:25-cv-01063, 2025 WL 2084400, at *5 (W.D. Wash. July 24, 2025); *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1119 n. 3 (9th Cir. 2001) ("Deferred action refers to an exercise of administrative discretion by the [immigration agency] under which [it] takes no action to proceed against an apparently deportable alien based on a prescribed set of facts generally related to humanitarian grounds.") (internal quotations omitted); *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, 691 F.3d 1250, 1258 n. 2 (11th Cir. 2012) ("Deferred action

status . . . amounts to, in practical application, a reprieve for deportable aliens. No action (i.e. no deportation) will be taken . . . against an alien having deferred action status.”)
(quoting *Pasquini v. Morris*, 700 F.2d 658, 661 (11th Cir. 1983)).

COUNT ONE
Violation of Fifth Amendment Right to Due Process

41. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.
42. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.
43. The Sixth Circuit has held that the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), regarding the adequacy of process, applies in the context of immigration detention. See *United States v. Silvestre-Gregorio*, 983 F.3d 848, 852 (6th Cir. 2020).
44. In regard to the first *Mathews* factor, Petitioner has a significant private interest in avoiding detention, one of the “most elemental of liberty interests.” See *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). He is now “experiencing [many of] the deprivations of incarceration, including loss of contacts with friends and family, loss of income earning...lack of privacy, and, most fundamentally, the lack of freedom of movement.” See *Günaydin v. Trump*, No. 25-cv-01151, 2025 WL 1459154, at *7 (D. Minn. May 21, 2025).
45. As to the second *Mathews* factor, a risk of erroneous deprivation is minimized by requiring reasonable conditions of supervision be imposed upon Petitioner’s release.
46. Finally, as to the third factor, while Respondents do have “a legitimate interest in ensuring noncitizens’ appearance at removal proceedings and preventing harms to the community,” here, Respondents have not established an interest in regard to detaining Petitioner. *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025).

47. Petitioner's removal order became administratively final in 2011. The 90-day authorized detention period under 8 U.S.C. § 1231(a)(1) in which to detain and remove Petitioner has since passed.
48. Further, by granting Petitioner deferred action status, which is currently valid, Respondents have chosen to "refrain from (or, in administrative parlance, to defer in) executing an outstanding order of deportation." *Johns v. Dep't of Justice*, 653 F.2d 884, 890 (5th Cir. 1981). Noncitizens granted deferred action are considered to be in a period of authorized stay. USCIS Policy Manual, Vol. 1, Part H, Ch. 2(A)(4), *available at*: <https://www.uscis.gov/policy-manual/volume-1-part-h-chapter-2> (last visited April 1, 2026).
49. For these reasons, Petitioner's ongoing detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO
Violation of 8 U.S.C. § 1231(a)

50. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.
51. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention "beyond the removal period" only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute."). Because Petitioner's removal is not reasonably foreseeable, his detention does not effectuate the purpose of the statute and is accordingly not authorized by § 1231(a).
52. As set forth, *supra*, Petitioner's removal is not reasonably foreseeable because he is currently in deferred action status. Once deferred action is granted, "no action will thereafter be taken to proceed against an apparently deportable alien." *Reno*, 525 U.S. at 484. A grant of

“deferred action” is an “affirmative immigration benefit” that effectively makes it unlawful for a removal order to be executed while the alien has deferred action status. *Ayala v. Bondi*, No. 2:25-cv-01063, 2025 WL 2084400, at *5 (W.D. Wash. July 24, 2025); *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1119 n. 3 (9th Cir. 2001) (“Deferred action refers to an exercise of administrative discretion by the [immigration agency] under which [it] takes no action to proceed against an apparently deportable alien based on a prescribed set of facts generally related to humanitarian grounds.”) (internal quotations omitted); *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, 691 F.3d 1250, 1258 n. 2 (11th Cir. 2012) (“Deferred action status . . . amounts to, in practical application, a reprieve for deportable aliens. No action (i.e. no deportation) will be taken . . . against an alien having deferred action status.”) (quoting *Pasquini v. Morris*, 700 F.2d 658, 661 (11th Cir. 1983)).

COUNT THREE
Accardi Doctrine

53. Petitioner repeats and incorporates by reference all allegations above as though fully set forth fully herein.
54. Under the *Accardi Doctrine*, Respondents are required to follow their own rules and procedures. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.”)
55. Respondents are well aware that they cannot remove Petitioner from the United States while he is in deferred action, but continued to detain him. Even after counsel spoke to a supervisor, Respondents continued with their unlawful actions.
56. For those reasons, Respondents failed to follow their own procedures.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Order Respondents not to transfer Petitioner out of the jurisdiction of the ICE Kansas City Field Office during the pendency of these proceedings to preserve jurisdiction and access to counsel;
- (3) Declare that Petitioner's ongoing detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1231(a), and federal regulations and, thus, the *Accardi* Doctrine;
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately under reasonable conditions of supervision;
- (5) Grant any further relief this Court deems just and proper.

Dated: May 21, 2026

Respectfully Submitted,

/s/ Brittni Rivera

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