UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-04016-JMB-EMB

Josue Isaias Merino Penado,

Petitioner,

v.

Todd Blanche, *et al.*,

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed his second habeas corpus petition[1] seeking release due to a missed biometrics appointment. Federal Respondents submit this response to Petitioner's habeas petition. The Court should dismiss Petitioner's request for habeas relief.

BACKGROUND

Any facts that are not specifically admitted herein are denied. On July 04, 2026, Petitioner's immigration attorney received notice for a biometric appointment for July 20, 2026. Dkt. 2-4. The notice provides directions for rescheduling an appointment, stating "[y]ou must make your request before the date and time of the original appointment . . ." Dkt. 2-4. On August 20, 2026, a month after the scheduled appointment, Petitioner's counsel sent an e-mail to ICE/ERO requesting assistance in completing biometrics for Petitioner's USCIS matter. Dkt. 2-5. On September 1, 2026, Petitioner's counsel sent a

[1] *Josue M.P. v. Easterwood*, No. 26-cv-3063 (NEB/JFD) Dkts. 9 and 11 (D. Minn. August 17, 2026)(hereinafter "*Josue M.P. I*").

second e-mail[2] requesting ICE/ERO to facilitate biometrics for Petitioner's USCIS matter. Dkt. 2-7. On September 8, 2026, Petitioner received two decisions from USCIS, one denying his U-Visa on the merits, Dkt. 2-8, and the other denying his U-Visa for failure to provide fingerprints, and not "inform[ing] USCIS of any difficulties in obtaining the required fingerprints. Dkt. 7-1. The denial on the merits provides a clear process to appeal the decision, "you may appeal . . . within 33 days of the date of this decision." Dkt. 2-8. The denial for not attending and communicating with USCIS regarding the missed biometric appointment does not provide an appeal process for abandonment. Dkt. 7-1. On September 17, 2026, within 30 days of receiving Petitioner's request for fingerprints, ICE/ERO delivered the fingerprints to USCIS. Declaration of Deportation Officer Xiong Lee (Decl.) ¶ 7. Petitioner remains in ICE/ERO custody at the Sherburne County Jail in Minnesota, until the completion of his removal proceedings.

ARGUMENT

As a threshold matter the issue of due process and unlawful arrest were previously resolved in *Josue M.P. I.* Additionally, Claims II and III of the current habeas petition are identical to Claims I and III of *Josue M.P. I*, which were fully litigated. *Ex. A*. Since the legality of Petitioner's detention has been previously determined by a judge and two prior

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[2] In the body of both e-mails there is reference to a "biometric request that was cancelled", the e-mail attachments are: 38-1 Def Ex. 13 Email.pdf; image001.png; Biometric Appt Notice; and G-28. Dkts. 2-5, 2-7. There is nothing in the record showing Petitioner's immigration attorney communicated with USCIS about rescheduling the biometric appointment or informing ICE/ERO about the appointment before its due date.

claims were argued in *Josue M.P. I*, this Court must dismiss the habeas petition. 28 U.S.C § 2244(a)-(b)(1).

With Claims II and III of the present matter already fully litigated, Petitioner is left with Claim I, which seeks release on the basis that their present detention caused a biometric noncompliance that resulted in a denial of their U-Visa. Pet. ¶ 37. As such Respondents will only fully address this argument raised in the habeas petition. *LLC v. Minn Assoicates LP*, No. 13-cv-0002 (PJS/JSM), 2014 WL 754686, at *4 n.4 & n.5 (D. Minn. Feb. 26, 2014).

I. Habeas is not proper vehicle for the relief Petitioner seeks

Petitioner attempts to frame their arguments to meet the requirements of habeas, when in fact the relief they seek is better suited as a writ of mandamus. Under 28 U.S.C. § 1361 a mandamus action to compel an officer or employee of the United States or agency thereof to perform a duty owed to Plaintiff. *Pittston Coal Group v. Sebben*, 488 U.S. 105, 121 (1988) (holding "[t]he extraordinary remedy of mandamus under 28 U.S.C. § 1361 will issue only to compel the performance of "a clear nondiscretionary duty.")(citing *Heckler v. Ringer*, 466 U.S. 602 (1984)). Whereas in a habeas petition the Petitioner must show that custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c)(3). "The heart and 'historic purpose' of habeas review is to consider whether a person is detained pursuant to lawful authority, and if they are not, to relieve the unlawful detention." *Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 892 (D. Minn. 2025) (granting interim release when petitioner showed both a substantial constitutional claim and exceptional circumstances that included need for medical care); *Spencer v. Haynes*, 774

F.3d 467, 469 (8th Cir. 2014) ("If the prisoner is not challenging the validity of his conviction or the length of his detention, such as loss of good time, then a writ of habeas corpus is not the proper remedy.") (citation omitted).

This is not an APA case. Petitioner paid only a $5.00 filing fee, styled his initial pleading as a petition for writ of habeas corpus, and did not go through the mechanisms for serving a summons and traditional civil complaint pursuant to F.R.C.P. 4. The Court ordered the Federal Respondents to answer the petition, not to prepare an administrative record of a final agency action upon which the parties could present cross-motions for summary judgment. It is black-letter law that habeas petitioners are limited to challenging the fact or duration of their confinement, not the conditions of that confinement or the agency policies governing it. *Spencer* at 469-71; *Kruger v. Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996). Thus, the Court cannot take up Petitioner's sweeping challenge to how federal agencies decide U-visa petitions, how quickly the agency responds to an untimely request for fingerprints, or have the agency reopen a U-visa application that was denied on the merits.

Petitioner is not the first habeas litigant to sneak civil claims into a habeas action. But this Court consistently decries the practice of "Frankenstein pleading" that "unduly broadens the narrow scope of habeas corpus and combines proceedings with incompatible procedural rules." *Patel v. Noem*, 2025 WL 2823561, at *2 (D. Minn. Sept. 12, 2025), *R&R adopted by* 2025 WL 2821375 (D. Minn. Oct. 3, 2025); *see also Canada v. Olmsted County Cmty. of Corrs*, 2022 WL 607482, at *8 (D. Minn. Mar. 2022) (citing District of Minnesota authority). Petitioner is free to file a civil action to pursue this claim, but they are not

properly before the Court in a petition for a writ of habeas corpus. Because their sole claim does not past the muster for habeas this case matter must be dismissed.

II. Petitioner's missed biometric appointment was caused by their lack of communication with USCIS and ICE/ERO.

Petitioner argues that due to being lawfully detained that ICE/ERO is the reason they missed their biometric appointment. Pet. ¶ 77. Again, Petitioner is not contesting the fact or duration of his present custody, therefore habeas relief is not available for the relief they seek. Nonetheless, Respondents will address their concern for lack of agency action. Under the Administrative Procedure Act (APA), federal agencies must, within a *reasonable time*, proceed to conclude a matter presented to it." 5 U.S.C. § 555(b)(*emphasis added*). When determining whether an agency acted within a reasonable time Courts apply the six *TRAC* factors: the rule of reason; congressional intent; nature of interests; competing agency priorities; nature and extent of the interests prejudiced; and no showing of agency impropriety required. *Telecomms. Research & Action Ctr. V. FCC*, 242 U.S. App. D.C. 222 (1984) (*TRAC*). A full discussion of the factors and how they apply to the present case is not necessary, because no Court has ever required agency action within 30 days unless Congress explicitly writes it into the governing statute. *Sierra Club v. Thomas*, 828 F.2d 783, 792 (D.C. Cir. 1987)(holding the Act imposed no date-certain deadline nor can such a deadline be inferred accordingly the agency did not unreasonably delay in acting); *Org. for Competitive Mkts. v. United States Dep't of Agric.*, 912 F.3d 455 (8th Cir. 2018)(adopting a cautious approach to judicial intervention that federal courts must be

wary of becoming the ultimate monitor of Congressionally set deadlines). With this groundwork established we look to the ICE/ERO guidance that is sought to be enforced.

The guidance that Petitioner is alleging that ICE/ERO is in violation of states in pertinent part, "ICE will initiate the fingerprinting process *upon the request* from the *attorney of record*." Dkt. 2-6 (*emphasis added*). The guidance does not establish a deadline for completing the task, and it clearly states that any agency action is predicated on the request from the attorney of record. The facts of this case prove fatal for the Petitioner's argument that the missed fingerprint appointment was because of ICE/EROs unreasonable delay. Petitioner's immigration attorney received notice of his biometric appointment on July 4, 2026. Dkt. 2-4. The notice provided the date of the appointment, July 20, 2026, and more importantly the process of rescheduling. Dkt. 2-4. The first communication with ICE/ERO was on August 20, 2026, a month after the scheduled appointment. Dkt. 2-5. ICE/ERO complied with the request within 30 days. Decl. ¶ 7. As such, Petitioner's denial of U-visa for not providing fingerprints falls squarely on the Petitioner and his counsel for not communicating with the USCIS and ICE/ERO timely. Dkt. 2-5. This Court should not entertain this so-called habeas action as no argument against the fact or duration of custody has been raised. Also ICE/ERO did not unreasonably delay in gathering fingerprints for the Petitioner when they were notified a month after the due date and responded within 30 days of notification.

III. Petitioners U-Visa was denied on the merits

Despite submitting evidence that the U-visa was denied on the merits, Petitioner failed to address the impact of such a denial in their petition. Dkt. 2-8. Likely because this

hurdle is hard to overcome given that the notice gives specific directions on when and how to appeal. Dkt. 2-8. The Eighth Circuit requires a § 2241 petitioner to exhaust available administrative remedies before seeking habeas relief, absent a concrete showing that exhaustion would be futile or incapable of preventing irreparable injury. *Madsen v. Keohane*, 128 F.3d 1195, 1196 (8th Cir. 1997); *United States v. Chappel*, 208 F.3d 1069, 1070 (8th Cir. 2000); see also *Willis v. Ciccone*, 506 F.2d 1011, 1015 (8th Cir. 1974). Those principles apply with special force here: USCIS—not the habeas court—is the agency charged with applying the U-visa eligibility standards, assessing the record, and correcting an erroneous denial in the first instance.

As such, Petitioner cannot use § 2241 to bypass the administrative process Congress and DHS have provided for review of a Form I-918 denial. Under 8 C.F.R. § 214.14(c)(5)(ii), a petitioner may appeal a denial of Form I-918 to USCIS's Administrative Appeals Office (AAO) under 8 C.F.R. § 103.3. Critically, when such an appeal is taken, "the denial will not be deemed administratively final until the AAO issues a decision affirming the denial." 8 C.F.R. § 214.14(c)(5)(ii). The appeal is filed on Form I-290B within 33 days and permits agency-level correction of factual or legal error. 8 C.F.R. § 103.3(a)(2)(i), (iii); Dkt. 2-8.

Exhaustion serves the recognized interests of agency autonomy, factual development, and judicial efficiency. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992). Petitioner identifies no basis to conclude that an AAO appeal would be futile; indeed, the regulations expressly provide that the original USCIS official may treat the appeal as a motion to reopen or reconsider and grant favorable action within 45 days. 8 C.F.R. §

103.3(a)(2)(iii). Nor does detention itself establish irreparable injury sufficient to excuse exhaustion, especially where the U-visa merits decision and the independent legal basis for DHS custody are distinct.

Further, habeas, as mentioned throughout this response, is not the vehicle to obtain additional administrative adjudication of an immigration-benefit claim. The traditional office of habeas is to secure release from unlawful custody—not to compel the Executive to revisit an immigration-benefit determination or grant ancillary immigration relief. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107, 114–15 (2020). Petitioner's claimed entitlement to release rests on a U-visa denial that remains subject to the prescribed USCIS review process. The Court should therefore dismiss without prejudice pending exhaustion of the AAO appeal.

IV. Petitioner was never a member of *I.C.W.C.*

Although, this issue was litigated in *Josue M.P. I*, the Respondents address it again. Notwithstanding the fact that Petitoner's U-visa was denied, see *supra*, they were never class members of the *I.C.W.C.* injunction. Respondents agree with other decisions in this District that the injunction issued in *I.C.W.C. v. Noem* does not entitle a Minnesota petitioner relief from removal, let alone detention pursuant to a removal order. 2:25-cv-09848-AB-AS, 2026 WL 1455004, ECF No. 57 (C.D. Cal. May 20, 2026). *See generally Eliseo C. v. Blanche*, No. 26-cv-2282 (ECT/SGE), ECF No. 12 (D. Minn. June 29, 2026); *see also Carlos E. V. v. Blanche*, No. 26-cv-1618 (LMP/DJF), 2026 WL 2150391, at *2–3 (D. Minn. July 27, 2026); *see also Kevin J. R. M. v. Blanche*, No. 26-cv-3122 (KMM/JFD), 2026 WL 2230647, at *4 (D. Minn. July 17, 2026), *reported and recommendation adopted*

by, No. 26-cv-3122 (KMM/JFD), 2026 WL 2227793 (D. Minn. Aug. 3, 2026); *see also Josue I. M. P. v. Easterwood*, No. 26-cv-3063 (NEB/JFD), ECF No. 9, at 6, n.3 (D. Minn. Aug. 6, 2026).

Certainly, jurisdictional hurdles exist that would make it difficult to assert an *I.C.W.C.* claim if Petitioner wanted to. 8 U.S.C. § 1252(f)(1) bars *ICWC*'s class-wide "stays." The provision "generally strips lower courts of 'jurisdiction or authority' to 'enjoin or restrain the operation of' certain provisions of the INA. The ordinary meaning of the terms 'enjoin' and 'restrain' bars…class-wide relief." *Garland v. Aleman Gonzalez*, 596 U.S. 543, 543–44 (2022). The *ICWC* court was aware of this, noting in its opinion that § 1252(f)(1) "bars this district court from enjoining the operation of certain provisions of the INA with respect to anyone but an individual alien. Classwide injunctions are barred. Pointing to the phrase '[r]egardless of the nature of the action or claim,' (Federal) Defendants argue that this prohibition on the district court issuing classwide injunctions bars *all* classwide relief that Plaintiffs seek here." *ICWC* at *17. The *ICWC* court should have concluded its analysis there.

However, the court pressed on, believing it found a novel way to solve its jurisdictional problem: a stay under APA § 705 that supposedly provided a materially identical form of classwide relief. *ICWC* at *47 ("Pursuant to 5 U.S.C. § 705, the Court hereby **STAYS** the 2025 Guidance. This stay applies in favor of All Individual Plaintiffs, the current and future clients of the Organizational Plaintiffs, and the members of all three Classes."). The problem is that this materially functions as an injunction.

The *ICWC* court's actions cannot survive *Garland v. Aleman Gonzalez*, which held that the prohibition under § 1252(f)(1) applies "[r]egardless of the nature of the action or claim," and the word "restrain" as used in the statute means broadly "to check, hold back, or prevent." 596 U.S. 543, 549–51 (2022); *accord Biden v. Texas*, 597 U.S. 785, 798 (2022).[3] In other words, Section 1252(f)(1)'s bar turns on what a particular order does, not what it is captioned. This is because, like the Constitution, the INA "deals with substance, not shadows." *SFFA v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023); *cf. San Juan Cellular Tel. Co. v. PSC*, 967 F.2d 683, 684 (1st Cir. 1992) (Breyer, J.) (a declaratory judgment of unlawfulness "is equivalent to an injunction"). The *ICWC* Order directs DHS's conduct toward three classes, not a particular judicial proceeding. For this reason, the court lacked authority under § 1252(f)(1) to enter it, and it would likewise be unavailable to Petitioner on that ground should she seek it.

EVIDENTIARY HEARING

Respondents believe the Court can rule on this petition without holding an evidentiary hearing. The facts are not likely to be disputed, and the only issues before the Court are ones of legal interpretation capable of resolution on the parties' submissions.

CONCLUSION

Habeas relief is not the appropriate vehicle for the claims brought by Petitioner. Claims II and III have already been fully litigated in *Josue M.P. I.* As such this Court

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[3] "[N]o court (Other than the Supreme Court) shall have jurisdiction or authority *to enjoin or restrain* the operation of the provisions of part IV of this subchapter." 8 U.S.C. § 1252(f)(1) (italics added).

should deny or dismiss the petition in its entirety.

Dated: September 17, 2026

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