District Judge James L. Robart
Magistrate Judge Brian A. Tsuchida

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CARLOS VELASCO GOMEZ, Petitioner, v. BRUCE SCOTT, *et al.*, Respondents.	Case No. 2:25-cv-00522-JLR-BAT FEDERAL DEFENDANTS'[1] OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND STAY OF REMOVAL Noted for Consideration: May 22, 2025

I. INTRODUCTION

This Court should deny Petitioner Carlos Velasco Gomez's Motion for Preliminary Injunction and Stay of Removal. Dkt. No. 11 ("PI Mot."). In the underlying habeas petition, Velasco Gomez claims that his detention violates the Due Process Clause of the Fifth Amendment because U.S. Citizenship and Immigration Services ("USCIS") granted him deferred action and issued employment authorization pursuant to the bona fide determination

[1] Respondent Bruce Scott is not a Federal Respondent.

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("BFD") process for U-1 nonimmigrant status petitioners.[2] Dkt. No. 1, Petition ("Pet."), ¶¶ 55-58. Subsequently, he filed a related case raising an Administrative Procedure Act ("APA") challenge of the Department of Homeland Security's ("DHS") purported "arbitrary and capricious decision to *per se* revoke [his] grant of deferred action, by detaining him and seeking to execute his removal to Mexico . . . ." *Velasco Gomez v. Noem*, No. 2:25-cv-783-GJL, Dkt. No. 1, Complaint ("Compl."), ¶ 1. The claims in both cases lack merit as they are based on Velasco Gomez's fundamental misunderstanding of "deferred action" in the context of a U visa BFD grant.

"Deferred action" is an act of administrative convenience that gives some cases lower priority for removal. 8 C.F.R. § 274a.12(c)(14). Deferred action is not a stay of removal as purported by Velasco Gomez. He points to no statutory or regulatory authority that supports his misinterpretation of the benefit. Moreover, the Motion is an improper request for judicial review of the U.S. Immigration and Customs Enforcement's ("ICE") discretionary decision to execute his removal order, which Congress expressly forbids. 8 U.S.C. § 1252(g).

ICE lawfully detains Velasco Gomez at the Northwest ICE Processing Center ("NWIPC") as he is subject to a reinstated order of removal. 8 U.S.C. § 1231(a). While he challenges the basis for the reinstatement of his removal order, this Court also lacks jurisdiction to entertain this challenge. 8 U.S.C. § 1252(a)(5). Furthermore, USCIS's ability to revoke employment authorization and terminate deferred action is separate and apart from ICE's statutory authority to execute removal orders. Thus, the only issue for this Court to decide is whether a grant of deferred action as part of the U visa BFD process stays DHS's discretionary authority to execute a valid order of removal. The answer is no. USCIS's BFD determination

[2] Throughout the Motion, Velasco Gomez conflates his BFD determination with a waiting list decision. See, e.g., PI Mot., at 2, 6 (stating that DHS has placed him on the wait list). As described below, these are two separate forms of review.

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while his U visa petition is pending neither precludes ICE from executing an outstanding removal order nor confers a stay of removal. *See* 8 C.F.R. §§ 214.14(c)(1)(ii) & (c)(5)(i). Also, removal would not vitiate Velasco Gomez's U visa eligibility. 8 C.F.R. § 214.14(c)(5)(i)(B) (confirming that a Form I-918 can be approved for individuals outside the United States).

Accordingly, this Court should deny the Motion.

II. BACKGROUND

A. Creation of the U Visa Program

Congress has conferred upon the U.S. Department of Homeland Security ("DHS") Secretary ("the Secretary") the authority to determine the admission conditions and processes for nonimmigrants who are admitted to the United States for a temporary period and a particular, limited purpose. 8 U.S.C. §§ 1101(a)(15), 1184(a)(1); *see also Elkins v. Moreno*, 435 U.S. 647, 663-66 (1978). In October 2000, Congress created the U nonimmigrant classification (colloquially "the U visa program") as a part of the Victims of Trafficking and Violence Protection Act of 2000 ("VTVPA"), Pub. L. 106-386, 114 Stat. 1464, to provide nonimmigrant status to certain victims of crime who cooperate with law enforcement in the investigation or prosecution of a qualifying crime. *See* 8 U.S.C. § 1101(a)(15)(U).

An individual is eligible for principal, U-1 nonimmigrant status if the individual can show that he or she: (1) has suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime; (2) has credible or reliable information about the crime, and has been, is being, or is likely to be helpful to law enforcement in investigating or prosecuting the crime; and (3) is admissible to the United States or has had all grounds of inadmissibility waived. *See id.*; *see also* 8 U.S.C. § 1182(a); 8 C.F.R. §§ 214.1(a)(3)(i), 214.14(c)(2)(iv). If USCIS approves the petitioner's U visa petition and the petitioner is in the United States, the petitioner will receive lawful U-1 nonimmigrant status and employment authorization for up to

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four years. *See* 8 U.S.C. § 1184(p)(6). The petitioner may also be able to petition for certain qualifying relatives to accompany or follow to join them. *See* 8 U.S.C. § 1101(a)(15)(U)(ii). After three years of continuous physical presence in U nonimmigrant status, a U nonimmigrant may apply to adjust status to lawful permanent resident status. *See* 8 U.S.C. § 1255(m)(1).

On January 5, 2006, Congress enacted the Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA"), Pub. L. 109-162, 119 Stat. 2960. That statute directed the Secretary to promulgate regulations that implemented, among other things, section 1513 of the VTVPA. Pub. L. 109-162, § 828, 119 Stat. 3066. DHS published an Interim Rule, effective October 17, 2007, giving USCIS sole jurisdiction over U visa petitions. New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014 (Sept. 17, 2007), *codified at* 8 C.F.R. § 214.14.

B. The U Visa Program

1. U Visa Requirements

To seek U nonimmigrant status, an individual submits a Form I-918. 8 C.F.R. §§ 214.14(c)(1), (f)(2). An approvable U visa petition is one that meets all the criteria to be granted U nonimmigrant status. Specifically, the petitioner will have "suffered substantial physical or mental abuse as a result of having been a victim of" certain criminal activity. 8 U.S.C. § 1101(a)(15)(U)(i)(I); 8 C.F.R. § 214.14(b)(1). The petitioner must submit a certification from a "Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity," and the certification must state the petitioner "has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution." 8 U.S.C. § 1184(p)(1). Additionally, to be eligible for U nonimmigrant status, the petitioner or derivative must be admissible to the United States or merit a favorable exercise of discretion to waive all grounds of inadmissibility. *Id.*, §§ 1182(a), (d)(3)(A)(ii), (d)(14); 8 C.F.R. §§ 212.17,

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214.1(a)(3)(i). For an inadmissible alien's Form I-918 to be approved, USCIS must approve a Form I-192 to waive all applicable grounds of inadmissibility in USCIS's discretion. 8 C.F.R. §§ 212.17(a), (b).

2. *Waitlist Process and U Visa Backlog*

The U visa program has a statutory cap of 10,000 principal U-1 nonimmigrant visas per year. 8 U.S.C. § 1184(p)(2)(A). This means that the number of noncitizens who may be issued U-1 nonimmigrant visas in any fiscal year shall not exceed 10,000. *See id.* In the 2007 rule promulgating the regulations governing U nonimmigrant classification, USCIS estimated it would receive approximately 12,000 principal U visa petitions per year. *See* 72 Fed. Reg. at 53033. Anticipating that the 10,000 annual statutory cap would be met within the first few fiscal years of enactment, USCIS created a regulatory waiting list process. *See* 8 C.F.R. § 214.14(d)(2). If a U visa petition is determined to be approvable, but for the fact that a visa is not available due to the statutory cap, the petitioner is placed on the waiting list. *See id.*, § 214.14(d)(2). This determination of eligibility in all respects but for the statutory cap includes assessing whether it appears that any grounds of inadmissibility should be waived in the exercise of discretion in the final adjudication when space is available under the cap. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 6, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6 (last visited May 20, 2025).[3]

The regulations provide that, when USCIS places a petition on the waiting list, "USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U- 1 petitioners are on the waiting list. USCIS, in its discretion, may authorize employment for such petitioners and qualifying family members." 8 C.F.R. § 214.14(d)(2). "Deferred action" is

[3] Defendants ask that the Court take judicial notice of government websites cited in this motion. *See Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 999 (9th Cir. 2010) (information on government websites is subject to judicial notice).

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an act of administrative convenience that gives some cases lower priority for removal. 8 C.F.R. § 274a.12(c)(14); USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited May 20, 2025).. While deferred action does not provide immigrant or nonimmigrant status, an individual granted such deferred action does not accrue unlawful presence in the United States during the deferred action period. 8 C.F.R. § 214.14(d)(3); *see also Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1058-59 (9th Cir. 2014). As a matter of policy, USCIS only considers deferred action, rather than parole, for individuals who are placed on the waiting list while inside the United States. USCIS Policy Manual, Vol. 3, Part C, Ch. 4, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-4 (last visited May 20, 2025).

3. Bona Fide Determination Process

In 2021, USCIS published a Policy Manual update implementing a process which provides employment authorization and deferred action more efficiently to U visa petitioners and their qualifying family members with pending bona fide petitions who merit a favorable exercise of discretion. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited on May 20, 2025). The process, referred to as the BFD process, is authorized under 8 U.S.C. § 1184(p)(6), which provides that "[t]he Secretary may grant work authorization to any alien who has a pending, bona fide application for [U] nonimmigrant status under section 1101(a)(15)(U) of this title." As part of the BFD process, USCIS has the discretion to issue work authorization and grant deferred action to a noncitizen who establishes that their pending U visa petition is "bona fide" and warrants the agency's exercise of discretion. 8 U.S.C. § 1184(p)(6); USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited on May 20, 2025).

By implementing this policy, USCIS sought to address the U visa backlog by preliminarily evaluating petitions and providing interim benefits as efficiently as possible. *Id.* The BFD process provides an opportunity for certain petitioners to receive employment authorization documents ("EADs") and deferred action for four years, renewable, if they receive a favorable BFD finding while their U visa petitions are pending, consistent with the William Wilberforce Trafficking Victims Reauthorization Act of 2008 ("TVPRA 2008"), Pub. L. 110-457 (Dec. 23, 2008), and the Secretary's authority over the administration and enforcement of the immigration laws. 8 U.S.C. § 1103(a)(1), (a)(3). The TVPRA 2008 amended the conditions on U nonimmigrant status by providing the Secretary with discretion to grant employment authorization to a noncitizen who has a pending, bona fide petition for U nonimmigrant status. *See* USCIS Policy Manual Vol. 3 Part C Ch. 1, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-1 (last visited on May 20, 2025); TVPRA 2008, Pub. L. 110-457, sec. 201(c).

To make a favorable BFD finding, USCIS first determines whether a pending petition is bona fide (which means "made in good faith; without fraud or deceit"), and then in its discretion, determines whether the petitioner poses a risk to national security or public safety, and otherwise merits a favorable exercise of discretion. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited on May 20, 2025). Alternatively, if for some reason a petitioner does not receive a BFD, only then does USCIS initiate a waiting list adjudication for the principal petitioner and any qualifying family members. USCIS Policy Manual Vol. 3, Part C, Ch. 6. If a petitioner is placed on the waiting list, they receive EADs and deferred action *or* parole for four years, renewable, while their U visa petitions are pending. 8 C.F.R. § 214.14(d)(2) (emphasis added); *see also* USCIS

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Policy Manual, Vol. 3, Part C, Ch. 6, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6 (last visited on May 20, 2025).

USCIS renders final decisions on U visa petitions when U visas become available based on the order the principal petition was received, with the oldest filings receiving highest priority. 8 C.F.R. § 214.14(d)(2); USCIS Policy Manual, Vol. 3, Part C, Ch. 7, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-7 (last visited on May 20, 2025).

D. Petitioner Velasco Gomez

Velasco Gomez is a Mexican national who has been removed from the United States on three previous occasions pursuant to a removal order issued in 1991. Pet., ¶¶ 16-26; Dkt. No. 5, Strzelczyk Decl., ¶¶ 3-4. At some point in 2011, Velasco Gomez reentered the United States without authorization or inspection. Strzelczyk Decl., ¶ 5; Pet., ¶ 27. Velasco Gomez asserts that he has remained in the United States since he entered in 2011. Pet., ¶ 27.

Velasco Gomez filed a Form I-918, Petition for U Nonimmigrant Status, in 2018. Pet., ¶ 9. On May 25, 2023, USCIS issued a favorable BFD finding on his Form I-918. *Id.* USCIS informed him that his "period of deferred action will begin on the date his employment authorization begins." *Id.*, Ex. 4. The notice explains that "[d]eferred action is an act of administrative convenience to the government which gives some cases lower priority for removal." *Id.* Velasco Gomez thereafter filed an application for an EAD. *Id.*, ¶ 29.

On October 10, 2024, Velasco Gomez was encountered by U.S. Customs and Border Protection ("CBP") at the Peace Arch Port of Entry after he was refused entry into Canada. Strzelczyk Decl., ¶ 6; Pet., ¶ 30. As a result of this encounter, DHS reinstated Velasco Gomez's prior order of removal the same day. Strzelczyk Decl., ¶ 6; Pet., Ex. 5. Velasco Gomez was released on an Order of Supervision ("OSUP"). Strzelczyk Decl., ¶ 6; Pet., Ex. 6.

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On November 14, 2024, USCIS issued an EAD to Velasco Gomez. Pet., Ex. 7. Contrary to Velasco Gomez's assertions, the bona fide determination, approval of employment authorization, and grant of deferred action did not place him on the U nonimmigrant waiting list. *See* USCIS Policy Manual, Vol. 3, Part C, Chs. 4, 6.

On January 26, 2025, ICE took Velasco Gomez into custody. Strzelczyk Decl., ¶ 7; Pet., ¶ 34. Because Velasco Gomez claimed fear of return to Mexico, ICE submitted a reasonable fear referral to USCIS pursuant to 8 C.F.R. § 208.31. Strzelczyk Decl., ¶ 8. After USCIS did not find that Velasco Gomez had a reasonable fear of return to Mexico, USCIS referred Velasco Cruz's fear claim to an IJ for review. *Id.*, ¶ 9. On April 2, 2025, the IJ concurred with the asylum officer's negative fear finding. *Id.*

On April 25, 2025, Federal Respondents filed a return and motion to dismiss the Petition. Dkt. No. 4. The motion informed the Court that Velasco Gomez's removal was imminent. *Id.*, at 1. In response, Velasco Gomez sought a temporary restraining order ("TRO") enjoining his removal and his transfer out of the NWIPC. Dkt. No. 6. On April 29, 2025, this Court issued the TRO, which stays his removal now through June 3, 2025. Dkt. Nos. 7, 10.

ICE has twice denied Velasco Gomez's Form I-246, Application for Stay of Deportation or Removal. By letter dated March 11, 2025, ICE denied his Form I-246 due to his grant of deferred action and the pending credible fear process. Pet., Ex. 9. ICE explained that Velasco Gomez was "not currently subject to imminent removal from the United States and granting an administrative stay of removal is not appropriate at this time." *Id.*

The next month,[4] ICE conducted a secondary review regarding Velasco Gomez's application for an administrative stay of removal after finding the reasoning in the first letter to

[4] The electronic signature on the letter is dated April 24, 2025, and inconsistent with the March 24, 2025 date of the letter. PI Mot, Thorward Decl., Letter.

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be inaccurate. PI Mot., Thorward Decl., Letter. In the new decision, ICE again denied Velasco Gomez's letter based on the factors enumerated in 8 U.S.C. § 1231(a)(2) and 8 C.F.R. § 212.5. *Id.* The letter explains that his application and supporting documents do not establish an "urgent humanitarian" or "significant public benefit" reason as a basis of the request for a stay in accordance with 8 C.F.R. § 241.6. *Id.* The letter further states that "[t]he denial of your ICE Form I-246 does not affect nor interfere with the continued adjudication of your pending U-visa application." *Id.*

Velasco Gomez's Form I-918 will be adjudicated when a nonimmigrant U visa becomes available consistent with the statutory cap. USCIS Policy Manual, Vol. 3, Part C, Ch. 7, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-7 (last visited May 20, 2025).

III. LEGAL STANDARD

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

"A plaintiff seeking a preliminary injunction must show that: (1) [he] is likely to succeed on the merits, (2) [he] is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Martin v. International Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984) (internal quotation omitted). Alternatively, a plaintiff can show that there are "serious questions going to the merits

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and the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter* factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal quotation omitted).

IV. ARGUMENT

A. This Court lacks jurisdiction to halt the execution of a valid order of removal.

Congress has spoken clearly, emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). As a result, this Court lacks jurisdiction to review ICE's decision to execute Velasco Gomez's reinstated order of removal.

In the exercise of its constitutional power to define federal court jurisdiction, in 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which repealed the existing scheme for judicial review of final orders of deportation and replaced it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee ("AADC")*, 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the INA, Congress provided in the newly-enacted Section 1252(g) that:

> Except as provided in this section and notwithstanding any other provision of law, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.

8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended Section 1252(g) to clarify that the statute's proscription against jurisdiction does in fact apply to habeas and mandamus actions. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310-11 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, Section 1252(g), now provides that:

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> Except as provided in this section and notwithstanding any other provision of law, *(statutory or nonstatutory), including* section 2241 of Title 28, or any other habeas corpus provision, and *sections 1361 and 1651 of such title*, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g) (2017) (emphasis added).

In *AADC*, the Supreme Court held that Section 1252(g) precludes judicial review of three discrete actions that DHS may take: the "'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 525 U.S. at 482 (original emphasis). With a valid reinstated order of removal, any request for this Court to enjoin Velasco Gomez's removal falls directly within one of the discrete actions precluded from judicial review. *Velarde-Flores v. Whitaker*, 750 Fed. Appx. 606, 607 (9th Cir. 2019) (unpublished) ("The decision whether to remove aliens subject to valid removal orders who have applied for U-visas is entirely within the Attorney General's discretion."); *see also Balogun v. Sessions*, 330 F. Supp.3d 1211, (C.D. Cal. 2018) ("courts have had no difficulty concluding that denials of stays of removal – even with pending U-visa applications – are unreviewable under section 1252(g)").

Accordingly, this Court lacks jurisdiction to enjoin ICE's execution of Velasco Gomez's removal order. *Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) ("No matter how Matias frames it, his challenge is to the Attorney General's exercise of his discretion to execute Matias's removal order, which we have no jurisdiction to review.").

B. This Court lacks jurisdiction to review Velasco Gomez's final order of removal.

In the related case, Velasco Gomez alleges that the reinstatement of his order of removal was arbitrary and capricious. Compl., ¶¶ 59-61. While he concedes that he reentered the United States without inspection in 2011 (Strzelczyk Decl., ¶ 5; Pet., ¶ 27), and he acknowledges that he exited the United States in October of 2024 (Compl., ¶ 32), Velasco Gomez now claims that

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DHS improperly reinstated his removal order when he attempted to reenter the United States. Compl., ¶ 59; *but see* Pet., ¶ 56 (stating that Velasco Gomez does not challenge the 2024 reinstatement of his prior removal order). He seems to argue that the deferred action grant rendered his October 2024 reentry a lawful inspection and admission. However, this assertion is without support and ignores the fact that CBP allowed his reentry into the United States after reinstating his removal order and releasing him on an OSUP. Strzelczyk Decl., ¶ 6; Pet., Exs. 5 & 6. In any event, Velasco Gomez qualifies for a reinstated order of removal due to his 2011 return to the United States without authorization after having been removed under a prior order of removal. 8 U.S.C. § 1231(a)(5).

Furthermore, Velasco Gomez's request for this Court to review his removal order is in clear contradiction to the IIRIRA. "The IIRIRA substantially limited the availability of judicial review and streamlined all challenges to a removal order into a single proceeding: the petition for review." *Nken v. Holder*, 556 U.S. 418, 424 (2009) (citing 8 U.S.C. § 1252(a)(2) (barring review of certain removal orders and exercises of executive discretion); Section 1252(b)(3)(C) (establishing strict filing and briefing deadlines for review proceedings); Section 1252(b)(9) (consolidating challenges into petition for review). "A petition for review filed *with an appropriate court of appeals* in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. § 1252(a)(5) (emphasis added).

Accordingly, this Court does not have jurisdiction to consider Velasco Gomez's request to review his removal order.

C. Velasco Gomez is unlikely to succeed on the merits.

Velasco Gomez cannot establish that he is likely to succeed on the merits of his claims in either his habeas petition or the APA claim in the separate complaint. First, Velasco Gomez's pending Form I-918 does not preclude his removal from the United States. 8 C.F.R. §

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214.14(c)(1)(ii). Second, Velasco Gomez is unlikely to succeed on his claim that his ongoing detention violates due process because he has been granted deferred action and an EAD. Pet., ¶ 57. A grant of BFD deferred action is not synonymous with a stay of removal. *See Raghav v. Jaddou*, No. 2:25-cv-00408, 2025 WL 373638, at *2 (E.D. Cal. Feb. 3, 2025) ("Plaintiff obtaining a BFD in his favor would not prevent his removal"); *see also* "New Classification for Victims of Criminal Activity; Eligibility for 'U' Nonimmigrant Status, 72 Fed. Reg. 53014, 53016 n.3 (Sept. 17, 2007) (defining "deferred action" and "a stay of deportation or removal" separately and distinctly in the U visa context); 8 U.S.C. § 1227(d)(2) (listing deferred action and a stay of removal as distinct benefits). Deferred action is an act of administrative convenience that gives some cases lower priority for removal. 8 C.F.R. § 274a.12(c)(14); USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited on May 20, 2025. Additionally, the Supreme Court has made it clear that "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

ICE has reviewed Velasco Gomez's application for an administrative stay in accordance with 8 U.S.C. § 1227(d)(1). PI Mot., Thorward Decl., Letter; *see also* TRO, at 4-5. Section 1227(d)(1) provides that the DHS Secretary may grant a noncitizen an administrative stay of a final order of removal under 8 U.S.C. § 1231(c)(2). In turn, Section 1231(c)(2) allows for a stay of removal when "(i) immediate removal is not practicable or proper; or (ii) the alien is needed to testify in the prosecution of a person for a violation of a law of the United States or any State." 8 U.S.C. § 1231(c)(2). After reviewing Velasco Gomez's application and supporting documents, ICE found that the totality of the circumstances does not support a favorable exercise of discretion. PI Mot., Thorward Decl., Letter; *see also Raghav*, 2025 WL 373638, at *2 (citing

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Jiminez v. Dep't of Homeland Sec., No. 2:22-cv-967, 2022 WL 19410308, at *3 (C.D. Cal. Nov. 14, 2022). Federal Respondents do not dispute this Court's statement that the BFD grant fulfills DHS's prima facie review of Velasco Gomez's Form I-918 under 8 U.S.C. § 1227(d)(1). TRO, at 4-5. To the extent that Velasco Gomez may seek judicial review of ICE's discretionary denial of his application for an administrative stay of removal after this prima facie determination, this Court lacks subject matter jurisdiction under the APA. 8 U.S.C. § 1252(a)(2)(B)(ii).

Finally, Velasco Gomez's argument that his detention and removal violate the APA as a *per se* revocation of his deferred action or EAD violates the APA lacks merit. Compl., ¶ 57. Velasco Gomez cites no authority stating that revocation of employment authorization and/or termination of deferred action are prerequisites to detention or removal. *See generally* PI. Mot. Even if they were, Velasco Gomez cannot rely on 8 C.F.R. § 274a.14 to support his argument. Compl., ¶ 50. He cites to subsection (b), which deals with the revocation of employment authorization. But employment authorization revocation procedures provided in the regulation do not cabin the Secretary's "absolute discretion" to terminate deferred action and prioritize Velasco Gomez's removal. *Heckler*, 470 U.S. at 831.

Accordingly, Velasco Gomez is unlikely to succeed on the merits of his claims.

D. Velasco Gomez has not shown irreparable harm.

Velasco Gomez has not demonstrated that he will suffer irreparable injury absent the injunctive relief he seeks. To do so, he must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc.*, 844 F.2d at 674 (citing *Los Angeles Memorial Coliseum Commission v. National Football League,* 634 F.2d 1197, 1201 (9th Cir.1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only

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be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

Velasco Gomez asserts that his removal would moot out his claims. PI Mot., at 7. But a PI should not be granted for the sole purpose of maintaining the status of the litigation. This is not the status quo that a PI is meant to preserve. As this Court pointed out, "Although removal is a serious burden for many [noncitizens], it is not categorically irreparable." TRO, at 5 (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Even if removed, Velasco Gomez's Form I-918 will not be affected. He may seek a U-visa while outside of the United States.

"The Ninth Circuit makes clear that a showing of immediate irreparable harm is essential for prevailing on a [preliminary injunction]." *Juarez v. Asher*, 556 F. Supp.3d 1181, 1191 (W.D. Wash. 2021) (citing *Caribbean Marine Co., Inc. v. Bladridge*, 844 F.2d 668, 674 (9th Cir. 1988)). Velasco Gomez has not made such a showing here.

E. The balance of the interests and public interests favor the Government.

Finally, the balance of equities and the public interest weigh decisively against Velasco Gomez's request for preliminary injunctive relief. He asks this Court to enjoin the enforcement of a lawful and final removal order. It is well settled that the public interest in enforcement of United States' immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken*, 556 U.S. at 435 ("There is always a public interest in prompt execution of removal orders).

Accordingly, this Court should deny his Motion.

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V. CONCLUSION

For these reasons, Velasco Gomez has not satisfied the high burden of establishing entitlement to preliminary injunctive relief, and Federal Defendants request this Court deny his Motion for a Preliminary Injunction.

DATED this 20th day of May, 2025.

Respectfully submitted,

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I certify that this memorandum contains 4,957 words, in compliance with the Local Civil Rules.