

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ROBERTO CHAVEZ BARRIOS,

Petitioner-Plaintiff,

v.

GARRETT J. RIPA, in his official capacity as
Director of Miami Field Office, U.S. Immigration
and Customs Enforcement; **TODD LYONS**,
in his official capacity as Acting Director of
U.S. Immigration and Customs Enforcement;
KRISTI NOEM, in her official capacity as
Secretary of the U.S. Department of Homeland
Security; **U.S. DEPARTMENT OF**
HOMELAND SECURITY; and **U.S.**
IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Respondents-Defendants.

Case No. 1:25-cv-22644-DPG

**REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER
AND TRAVERSE IN SUPPORT OF VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS/COMPLAINT**

INTRODUCTION

On June 11, 2025, as ICE¹ scrambled to meet the administration's demand that it satisfy unprecedented arrest quotas,² ICE officers abruptly detained Petitioner-Plaintiff Roberto Chavez Barrios when he reported for a check-in. They detained him—and revoked the OSUP with which he had consistently complied—with no process whatsoever, no valid reason, in conflict with ICE's recent conclusion that he was *not* a flight risk nor danger, and in direct violation of every single requirement of binding regulations. And since Mr. Chavez Barrios—whose case remains pending before the BIA—cannot lawfully or practically be removed in the foreseeable future, he now faces potentially life-threatening risks in detention with no end in sight. ICE's rushed, processless decision to detain Mr. Chavez Barrios—despite no change in the legally relevant circumstances—not only violated the agency's regulations, but also the APA, the INA, the constitutional right to due process, and the RA. The government offers no meaningful rebuttal to any of these claims (and largely does not even attempt to dispute these facts). Accordingly, the Court should—as has been done in similar cases—order Mr. Chavez Barrios' immediate release.

ARGUMENT

I. Mr. Chavez Barrios' Detention Was Illegal

A. Respondents-Defendants' Processless Detention of Mr. Chavez Barrios Violated the APA and Mr. Chavez Barrios' Procedural Due Process Rights

i. Respondents-Defendants Violated Every Single Requirement of the Regulation They Invoke to Justify Mr. Chavez Barrios' Detention

Respondents-Defendants assert that they revoked Mr. Chavez Barrios's OSUP pursuant to 8 C.F.R. § 241.4(l)(2). Respondents' Opposition to TRO and Return and Mem. of Law

¹ All abbreviated terms not otherwise defined herein have the meaning ascribed in Petitioner-Plaintiff's Memorandum of Law in Support of Motion for Temporary Restraining Order ("TRO MOL"), ECF 10-1.

² See, e.g., Hamed Aleazez, *Under Pressure from the White House, ICE Seeks New Ways to Ramp Up Arrests*, N.Y. TIMES (June 11, 2025), <https://www.nytimes.com/2025/06/11/us/politics/ice-la-protest-arrests.html>; Ted Hesson & Kristina Cooke, *ICE's tactics draw criticism as it triples daily arrest targets*, REUTERS (June 10, 2025), <https://www.reuters.com/world/us/ices-tactics-draw-criticism-it-triples-daily-arrest-targets-2025-06-10/>.

(“Opposition” or “Opp.”) at 17; Opp. Ex. 38, ¶ 18, ECF 20-2 (Officer Lozada Decl.). This regulation only permits ICE to revoke OSUPs in certain, limited circumstances, and sets out procedures the agency must follow when it does. 8 C.F.R. § 241.4(l). Critically, Respondents-Defendants do not contest that, to the extent they violated any of § 241.4(l)’s dictates, this would contravene both the APA and procedural due process. *See* TRO MOL at 12-15 (collecting cases); *see also Aerial Banners, Inc. v. F.A.A.*, 547 F.3d 1257, 1260 (11th Cir. 2008) (agency can violate APA by “failing to follow its own regulations and procedures”) (citation omitted); *United States v. Teers*, 591 F. App’x 824, 840 (11th Cir. 2014) (an *Accardi* violation may be a due process violation); *Gayle v. Meade*, No. 20-21553-CIV, 2020 WL 2086482, at *6 (S.D. Fla. Apr. 30, 2020), *order clarified*, 2020 WL 2203576 (S.D. Fla. May 2, 2020) (ICE’s procedural failures “violated Petitioners’ Due Process Clause protections pursuant to the *Accardi* doctrine”). As set forth below, the evidence shows that Respondents-Defendants did, in fact, violate *every single* requirement of this regulation. The Court should thus uphold Mr. Chavez Barrios’ unchallenged APA and procedural due process claims and order his release on this basis.

a. ICE failed to follow any of the procedures required by 8 C.F.R. § 241.4(l)(2) to validly revoke Mr. Chavez Barrios’ OSUP

Under 8 C.F.R. § 241.4(l)(2), *only* “[t]he Executive Associate Commissioner” (meaning the ICE Executive Director)³ or an ICE district director⁴—if “revocation is in the public interest and circumstances do not reasonably permit referral” to the ICE Executive Director—can revoke an individual’s OSUP. The individual *must* be “notified of the reasons for revocation” and then given “an initial informal interview promptly after [detention] to have an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.4(l)(1).

³ *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *16 (W.D.N.Y. May 2, 2025).

⁴ This means, in this context, the ICE field office director. 8 C.F.R. § 1.2.

Here, Respondents-Defendants violated each of these three requirements. First, they do not even contend that the ICE Executive Director—or even a district director—revoked or authorized the revocation of Mr. Chavez Barrios’ OSUP.⁵ As multiple courts have found, this failure alone warrants release. *Ceesay*, 2025 WL 1284720 at *17; *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-89 (D. Mass. November 8, 2017). Second, while ICE Officer Carlos A. Lozada claims (a week later in litigation) that Mr. Chavez Barrios was served with the Notice of Revocation of Release on June 11, 2025, by some unspecified person, Opp. Ex. 38, ¶ 18, ECF 20-2, Mr. Chavez Barrios was never given *any* document at the time of his arrest (or since), Reply Ex. A, ¶ 9 (Chavez Barrios Decl.). Moreover, the government has not provided competent evidence that any such Notice was served, *e.g.*, a copy of the Notice, contemporaneous documentation that it was served, or even testimony from the person who purportedly served it.⁶ To the extent there is a factual dispute as to this violation, limited discovery is warranted.

Third, Respondents-Defendants never provided Mr. Chavez Barrios a meaningful “opportunity to respond to the reasons for revocation stated in the notification.” § 241.4(l)(1). While Officer Lozada asserts that, a week after Mr. Chavez Barrios’ arrest and the filing of this litigation, he was afforded an “informal interview,” Opp. Ex. 38, ¶ 18, ECF 20-2, that “interview” did not remotely satisfy § 241.4(l)(1). For one thing, Mr. Chavez Barrios could not have had “an opportunity to respond to the reasons for revocation stated in the notification” because he never received any such Notice, *see supra*. Even if he had, this so-called “interview” provided him no meaningful opportunity to respond; it was a one-sided interaction lasting no

⁵ In other cases, the government has submitted a signed copy of the Notice of Revocation of Release, which indicates who authorized the revocation. *See, e.g., Ceesay*, 2025 WL 1284720 at *4; *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-89 (D. Mass. November 8, 2017). Here, this Notice is conspicuously absent from the record.

⁶ *Compare, e.g., Diaz v. Sessions*, No. 17-CV-24246, 2018 WL 11447650, at *1 (S.D. Fla. Jan. 24, 2018) (noting that Notice of Revocation had been filed with the court).

more than a minute and conducted entirely in English—a language Mr. Chavez Barrios barely speaks and understands—without an interpreter. *Id.* ¶ 20. Mr. Chavez Barrios was not asked a single question, much less allowed to address his re-detention; he was simply told that he was “not going to be released.” *Id.* This pretextual “interview” in which ICE (on the day its Opposition was due) merely told Mr. Chavez Barrios its conclusion in no way satisfies § 241.4(l)(1) and cannot be said to constitute any form of process. This is unsurprising, since the outcome was preordained; ICE had already stated in its June 11, 2025 Form I-213, Opp. Ex. 37 at 5, ECF 20-1, that Mr. Chavez Barrios would remain detained. This violation equally warrants his release. *Cesay*, 2025 WL 1284720 at **18-19; *Rombot*, 296 F. Supp. at 387-88.

b. ICE’s revocation of Mr. Chavez Barrios’ OSUP was also unjustified on the merits under 8 C.F.R. § 241.4(l)(2)

In addition to setting out the procedures ICE must follow when revoking an OSUP, § 241.4(l) also specifies the limited circumstances where OSUP revocation is permitted at all: the individual violated the OSUP’s conditions, it has become appropriate to enforce a removal order, or some other material change indicates release is no longer appropriate. 8 C.F.R. § 241.4(l)(2). None of those circumstances apply here. ICE does not claim Mr. Chavez Barrios violated his OSUP conditions, nor could it, and nothing has changed since ICE issued the OSUP two years ago. *See* TRO MOL at 13. If anything, the factors justifying release have grown stronger. *Id.*

While Respondents-Defendants’ assert that ICE revoked Mr. Chavez Barrios’ OSUP because he “can be removed to a third-party country,” Opp. at 11, apparently invoking § 241.4(l)(2)(iii), the reality is that Mr. Chavez Barrios cannot be removed anywhere for the foreseeable future. For one thing, his removal is currently legally prohibited, as he is still in ongoing proceedings before the BIA. 8 C.F.R. § 1003.6; *see* TRO MOL at 13, 18. Respondents-Defendants do not dispute this critical fact and therefore waive any argument to the contrary.

T.R. by and through Brock v. Lamar County Board of Educ., 25 F.4th 877, 884-85 (11th Cir. 2022). Nor could they, as the government itself has adhered to this view of 8 C.F.R. § 1003.6,⁷ and no court—so far as Petitioner-Plaintiff is aware—has adopted a contrary one. *See, e.g., Reyes v. Lynch*, No. 15-CV-00442-MEH, 2015 WL 5081597, at *3 (D. Colo. Aug. 28, 2015) (“Until Petitioner’s appeal to the BIA [in his withholding-only proceedings] is concluded, Petitioner may not be removed. 8 C.F.R. § 1003.6.”).

A second and independent reason Mr. Chavez Barrios cannot be removed in the foreseeable future is that the government has nowhere to deport him. It cannot remove him to Mexico, his country of origin, because he is likely to be tortured there. Norton Decl., Ex. C, ECF 1-4 (2025 CAT Decision). And even if it could legally remove him elsewhere, ICE admits it has not even received internal authorization to do so, Opp. Ex. 38, ¶ 19, ECF 20-2 (Officer Lozada Decl.), nor has it identified any country that would accept him. *Id.*; Opp. at 2; Opp Ex. 37; Reply Ex. A, ¶¶ 9, 20 (Chavez Barrios Decl.); Norton Decl., ¶ 19, ECF 1-3. Indeed, ICE itself seems to recognize as much and implicitly concedes that removal is not likely to occur anytime soon. *See* Opp. Ex. 38, ¶ 18, ECF 20-2 (Officer Lozada Decl.) (stating intention to conduct another “interview” with Mr. Chavez Barrios in three months). Ultimately, ICE is no closer to removing Mr. Chavez Barrios now than when he was released on an OSUP more than two years ago.

To the extent Respondents-Defendants invoke Mr. Chavez Barrios’ immigration and criminal history as a reason for his OSUP revocation (which is unclear), Opp. Ex. 38, ¶ 19, ECF 20-2 (Officer Lozada Decl.); Opp. at 7,⁸ this is equally unavailing. They do not even attempt to

⁷ *See* DETENTION AND DEPORTATION OFFICER’S FIELD MANUAL, Chp. 20.7(c)(1) (“Under 8 C.F.R. 3.6 [the identical predecessor statute to 8 C.F.R. 1003.6], the timely filing of an appeal of a decision by the Immigration Court will operate as an automatic stay. This applies to appeals of *all* decisions by the Immigration Court except an appeal of a denial of a motion reopen or reconsider or denial of a request for a stay of deportation or removal.”) (emphasis added); Efficient Case and Docket Management in Immigration Proceedings, 89 FR 46742-01 (“Under current regulations, orders of removal are stayed while an appeal is pending....”).

⁸ While Mr. Chavez Barrios’ immigration and criminal history is ultimately irrelevant to the issue at hand since ICE

explain why this would suddenly trigger concerns, particularly when ICE—by releasing him under § 241.4 in April 2023—necessarily already determined otherwise. 8 C.F.R. § 241.4(d)(1) (providing that ICE may only release noncitizens under this regulation if satisfied they will not “pose a danger to the community” or a “significant risk of flight”). Mr. Chavez Barrios’ full compliance with the intensive conditions of his release for the past two years both confirms the correctness of ICE’s original determination and affirms that ICE cannot suddenly claim that his past conduct now constitutes valid reason for OSUP revocation under § 241.4(l)(2). *Cf.* Opinion, *X v. Pittman*, No. 25-cv-02258-CPO at 17 (D.N.J. June 24, 2025), ECF 24 (“If Respondents’ [danger] arguments were made in good faith, presumably ICE would not have released Petitioner in 2023 or after his release would have taken action to re-detain him prior to ... 2025.”).

ii. Respondents-Defendants’ Decision to Re-Detain Mr. Chavez Barrios Is Also Arbitrary and Capricious in Violation of the APA

Respondents-Defendants’ unexplained and inexplicable decision to re-detain Mr. Chavez Barrios despite previously releasing him under successful supervision is also inherently arbitrary and capricious and an independent violation of the APA. *See* TRO MOL at 12-13 (collecting cases, including *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) (“Unexplained inconsistency is ... a reason for holding an interpretation to be [] arbitrary

already reviewed it and determined that it did not make Mr. Chavez Barrios a danger or flight risk warranting detention, *see* 8 C.F.R. § 241.4(d)(1), the Opposition’s description of that history is highly problematic. For one thing, it was entirely unnecessary and unduly prejudicial to reference complaints containing unproven, hearsay allegations, *see* Opp. at 5, 7-8, rather than simply citing conviction records, *see, e.g.*, Fed. R. Evid. 403, 404—particularly when also ignoring the context Mr. Chavez Barrios has himself about these events, *see* Norton Decl., Ex. A, ECF 1-4 (2021 CAT Decision). Respondents-Defendants’ repeated claim that Mr. Chavez Barrios has a “criminal conviction involving threats of extortion and rape against a smuggled alien,” Opp. at 5, 7-8, also seriously distorts the record. Mr. Chavez Barrios was only ever convicted of conspiracy to transport an alien within the United States, for which he was sentenced to time served (187 days). Opp. Ex. 3 at 7. While an immigration judge pointed out that Mr. Chavez Barrios’ co-conspirators were implicated in other threats, the judge acknowledged that even the complaint recognizes that Mr. Chavez Barrios himself was not, Opp. Ex. 26 at 4, as his lack of any related charges and minimal sentence reflects. Regardless, Mr. Chavez Barrios has never denied that he is a former gang member and has done things in the past that he regrets. *See* Norton Decl., Ex. I, ECF 1-12 (Sentencing Transcript); Norton Decl., Ex. C, ECF 1-6 (2025 CAT Decision). But the reality is that he publicly denounced all ties with the gang six years ago, at great risk to his safety, *id.*, and he has done nothing since suggesting he is a flight risk or danger.

and capricious....”)); *cf.* Mem. Dec. and Order, *Valdez v. Joyce*, No. 25-Civ-4627, at *7 (S.D.N.Y. June 18, 2025), ECF 15 (re-detention decision arbitrary and capricious where CBP previously released petitioner on recognizance and no relevant circumstances changed since).

B. Respondents-Defendants Do Not Contest That They Failed to Give Mr. Chavez Barrios Any Pre-Deprivation Notice or Opportunity to Be Heard, As Due Process Requires

Respondents-Defendants do not dispute that due process requires pre-deprivation notice and opportunity where, as here, an OSUP revocation implicated Mr. Chavez Barrios’ fundamental liberty interests. *See* TRO MOL at 15-17 (collecting cases, including *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003) (“[A]t a minimum, the Due Process Clause requires notice and the opportunity to be heard incident to the deprivation of life, liberty or property at the hands of the government.”)). Respondents-Defendants also do not contest that they failed to give Mr. Chavez Barrios either pre-deprivation process or an opportunity to be heard. Opp. at 2; Reply Ex. A, ¶¶ 5-9 (Chavez Barrios Decl.). This is yet another reason compelling his release. TRO MOL at 15-17; *cf.* Mem. and Order Granting TRO, *Villata Salzar v. Robbins, et al.*, No. 2:25-cv-05473, at *7 (C.D. Cal. June 18, 2025), ECF 11 (granting TRO where ICE failed to provide pre-deprivation process before re-detaining petitioner after prior release).

C. Respondents-Defendants Do Not Contest That Mr. Chavez Barrios’ Detention Violated His Substantive Due Process Rights

Similarly, Respondents-Defendants’ Opposition does not even mention Mr. Chavez Barrios’ substantive due process claim. That claim is grounded in (1) the lack of legitimate government purpose behind Mr. Chavez Barrios’ re-detention, given that he currently cannot legally or practically be removed, (2) the detention’s clearly punitive nature, given Mr. Chavez Barrios’ severe PTSD and the fact that less harsh alternatives to detention were available and had been fully serving their purpose for more than two years, and (3) ICE’s deliberate indifference to

Mr. Chavez Barrios' serious medical needs. *See* TRO MOL at 19-20 (collecting cases). Given the government's waiver of any opposition to these points, the Court should also grant release on this ground, as it did in *Gayle v. Meade*, 614 F. Supp. 3d 1175, 1200-1205 (S.D. Fla. 2020).

D. Mr. Chavez Barrios's Prolonged Detention Is Not Authorized by Statute

The more than 30 months Mr. Chavez Barrios has spent in ICE detention since the reinstatement of his removal order—despite no significant likelihood of removal in the reasonably foreseeable future—violates 8 U.S.C. § 1231(a) pursuant to *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). *See* TRO MOL at 17-19. While Respondents-Defendants contend that this claim is premature, suggesting that § 1231(a)'s "removal period" restarts every time a noncitizen is re-detained, Opp. at 12—and thus that the government can unilaterally control an individual's ability to challenge their detention—they cite no authority supporting such a statutory reading.⁹ The plain language of 8 U.S.C. § 1231(a) and *Zadvydas*'s clear aim to avoid prolonged detention instead demonstrate that there is only one "removal period." TRO MOL at 17-18. And here, as Supreme Court precedent makes clear, that period began after reinstatement of Mr. Chavez Barrios' removal order, when it became "administratively final" per § 1231(a).¹⁰ Accordingly, Mr. Chavez Barrios' can challenge his detention if he has been detained for more than six months since that date (which he has), and can show "there is no significant likelihood of [his] removal in the reasonably foreseeable future" (which he can). *Zadvydas*, 533 U.S. at 700-701.

While Respondents-Defendants point to out-of-circuit decisions finding that individuals

⁹ The one case they do cite, *Meskini v. U.S. Att'y Gen*, simply noted there was an argument in the case that the petitioner's removal period began when he was released from *criminal* custody, as § 1231(a)(1)(B)(iii) provides that the period begins on the latest of certain events, including "[i]f the alien is detained or confined (*except under an immigration process*), the date the alien is released from detention or confinement." 2018 WL 1321576, at *4 (M.D. Ga. Mar. 14, 2018) (citing § 1231 (a)(1)(B)(iii)) (emphasis added). As this is not the case here, *Meskini* is inapposite.

¹⁰ *Johnson v. Guzman Chavez*, 594 U.S. 523, 534-35 (2021); *see also Johnson v. Arteaga-Martinez*, 596 U.S. 573, 577 (2022) (acknowledging removal period had been calculated from date of reinstatement of removal order). Whether Mr. Chavez Barrios' prior removal order is administratively final certainly would not change solely based on his detention status, which further supports there only being a single removal period per removal order.

in ongoing withholding-only proceedings can essentially never make such a showing, simply because—at *some* point in the future—their proceedings will end, Opp. at 13-15, neither the Eleventh Circuit nor this Court has ever held this. The plain language of *Zadvydas* does not demand a showing of that removal will *never* occur, only that there is “no *significant* likelihood of removal in the *reasonably* foreseeable future,” 533 U.S. at 689 (emphasis added); *see also id.* at 701 (stressing that, “as the period of prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink”). As Justice Breyer emphasized in *Arteaga-Martinez*, which left open the question of *Zadvydas*’ application in withholding-only cases, 596 U.S. at 584, this is clearly the case where proceedings have become so protracted that there is no end in sight, *id.* at 590 (Brennan, J., concurring).¹¹ This is exactly the case here, as Mr. Chavez Barrios’ proceedings have already lasted nearly five years and will likely continue for many more; his removal is stayed in the meantime; and he may ultimately be unable to be removed at all. TRO MOL at 18. Under *Zadvydas*, Mr. Chavez Barrios must thus be released.

E. Mr. Chavez Barrios’ Detention Violated the Rehabilitation Act

Respondents-Defendants’ revocation of Mr. Chavez Barrios’ OSUP without reasonable accommodation of his severe PTSD violated the RA. TRO MOL at 20-21. Critically, Respondents-Defendants do not dispute Mr. Chavez Barrios’ diagnosis, nor the fact that it is a qualifying disability under the RA. *See id.* at 21. Given this, it would have been a reasonable accommodation for ICE not to detain him, but instead to ensure his presence and good behavior until he has an executable removal order by monitoring him via an ankle monitor and regular check-ins, which worked perfectly well for the past two years. *Id.* In contrast to the cases cited

¹¹ The cases cited by Respondents-Defendants do claim that “exceptional circumstances” would satisfy *Zadvydas* in the withholding-only context. *Castaneda v. Perry*, 95 F.4th 750, 761 (4th Cir. 2024). Here, that Mr. Chavez Barrios already spent more than two and a half years in immigration detention and has been granted CAT *three* times by two different immigration judges, yet DHS continues to appeal, *see* TRO MOL at 4-5, makes his case exceptional.

by Respondents-Defendants, Opp. at 18-19, such an accommodation would not have required a “fundamental or substantial alteration” to existing programs, as these alternatives to detention are statutorily and regulatorily authorized,¹² regularly employed,¹³ and already deemed appropriate for Mr. Chavez Barrios, *see supra*. Moreover, all but one of Respondents-Defendants’ cited cases involved claims of inadequate medical care during valid detention or imprisonment, as well as requests for damages, *see* Opp. at 18-19—not what Mr. Chavez Barrios asserts or seeks here. (The remaining case is completely inapposite).¹⁴ His RA claim should thus be granted.

II. The Court Has Jurisdiction to Adjudicate Mr. Chavez Barrios’ Claims, and to Enjoin His Transfer and Unlawful Removal

A. 8 U.S.C § 1252(g) Does Not Preclude Review of Mr. Chavez Barrios’ Unlawful Detention, Nor Does It Bar Injunction of His Transfer or Unlawful Removal

Contrary to Respondents-Defendants’ assertion, Opp. at 16-18, 8 U.S.C § 1252(g) does not bar the Court from adjudicating Mr. Chavez Barrios’ unlawful detention claims, nor from enjoining his transfer or unlawful removal. As the Supreme Court has stressed and the Eleventh Circuit has confirmed, § 1252(g) limits judicial review of “just three ‘discrete actions’: actions to ‘commence proceedings, adjudicate cases, or execute removal orders.’ *Camarena v. Dir., ICE*, 988 F.3d 1268, 1272 (11th Cir. 2021) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999) (“*AADC*”)) (emphasis in original). “And although ‘many other decisions or actions’ may be ‘part of the deportation process,’ only claims that arise from one of the covered actions are excluded from [judicial] review [by § 1252(g)].” *Id.* Moreover, the Supreme Court has “caution[ed] against interpreting § 1252(g)’s ‘arising from’ language broadly,” emphasizing

¹² *See* 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.4(d).

¹³ *See, e.g.*, TRAC IMMIGRATION, IMMIGRATION DETENTION QUICK FACTS, <https://tracreports.org/immigration/quickfacts/> (last visited June 24, 2025) (183,756 noncitizens currently monitored by ICE outside of detention).

¹⁴ In that case, *Savoy v. United States*, 962 F. Supp. 2d 1, 2 (D.D.C. 2013), the petitioner, who challenged the IRS’s garnishment of his wages, failed to allege discrimination based on his disability and to exhaust available administrative remedies. Here, Mr. Chavez Barrios raises a valid reasonable accommodation claim, *see* TRO MOL at 20-21, and has no administrative remedies to exhaust.

that it “bars only those claims that *directly relate* to the ‘three specific actions’ it lists.” *Id.* (citation omitted) (emphasis added). None of those actions are implicated here.

First, Mr. Chavez Barrios’ claims that his arbitrary and processless detention violated the APA, his due process rights, the INA, and the RA do not implicate any actions covered by § 1252(g). Indeed, the Eleventh Circuit (among many other courts) has found that challenges to unlawful detention are not barred by § 1252(g). *Madu v. U.S. Att’y. Gen.*, 470 F.3d 1362, 1367 (11th Cir. 2006) (§ 1252(g) does not preclude challenges to “detention and impending removal”); *accord E.D.Q.C. v. Warden, Stewart Det. Ctr.*, No. 4:25-CV-50-CDL-AGH, 2025 WL 1575609, at *3 (M.D. Ga. June 3, 2025); *Ozturk v. Hyde*, 136 F.4th 382, 398 (2d Cir. 2025); *Kong v. U.S.*, 62 F.4th 608, 609 (1st Cir. 2023); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999).

As the Eleventh Circuit emphasized, while § 1252(g) “bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions.” *Madu*, 470 F.3d at 1368 (citation omitted); *see also E.D.Q.C.*, 2025 WL 1575609, at *3 (“[T]his Court ‘will not construe section 1252(g) to immunize an unlawful practice from judicial review’”) (citation omitted).¹⁵ This is particularly true where, as here, there is no legally or practically executable removal order, *see supra*, which means that Mr. Chavez Barrios’ claims “cannot arise from the

¹⁵ For this reason, Respondents-Defendants’ reliance on *Foster v. Townsley*, 243 F.3d 210, 213 (5th Cir. 2001), *Opp.* at 18, is unavailing. There, the Fifth Circuit found it was precluded from reviewing the execution of a removal order issued in violation of the same automatic stay in place here, under 8 C.F.R. § 1003.6. But this runs counter to the Eleventh Circuit’s decisions in *Madu* and *Alvarez* and has been explicitly rejected by other circuit courts based on similar reasoning. *See, e.g., Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018) (plaintiff was “not attacking the removal order itself, as he [did] not challenge the validity of his removal order, or claim that the Attorney General should have exercised discretion to delay his removal.” Rather, because “the Attorney General lacked the authority to execute the removal order,” plaintiff’s claims arose “from the violation of [the stay].” And “even if we agreed with the government that [plaintiff’s] claims tangentially ‘arise from’ the execution of his removal order, we would still retain jurisdiction because the Attorney General entirely lacked the authority, and therefore the discretion, to remove him.”); *Guerra-Castaneda v. United States*, 656 F. Supp. 3d 356, 362-63 (D. Mass. 2023) (same); *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 867 (6th Cir. 2022) (“[O]ur interpretation of the text is limited to the conclusion that the statute contemplates ‘executable’ removal orders, and a removal order rendered unenforceable by a grant of DACA that has not been rescinded or terminated is not subject to execution.”).

decision to execute removal.” *Alvarez v. ICE*, 818 F.3d 1194, 1204-1205 (11th Cir. 2016) (exercising jurisdiction to review prolonged detention claim where petitioner argued his removal was not reasonably foreseeable) (emphasis added); *Madu*, 470 F.3d at 1367 (finding challenge to unlawful detention “on the ground that there is no removal order” not barred by § 1252(g)); *cf.* *Camarena*, 988 F.3d at 1273 (distinguishing *Alvarez* and *Madu* where petitioners asked court to enjoin enforcement of executable removal order). The Court can thus review these claims.

Second, § 1252(g) equally does not bar the Court from enjoining Mr. Chavez Barrios’ transfer or unlawful removal while this case remains pending. Mr. Chavez Barrios does not “argue[] that a transfer would impede his ability to challenge his removal,” Opp at 16. Rather, transfer would impede his ability to present his unlawful detention claims and jeopardize his health and physical safety. TRO MOL at 7-9. As the Second Circuit recently held, so long as the Court has jurisdiction to adjudicate Mr. Chavez Barrios’ underlying claims (which it does), it also has jurisdiction over related transfer decisions. *Ozturk*, 136 F.4th at 398; *see also* TRO MOL at 6-9 (collecting cases enjoining transfer). For the same reason, it can enjoin removal during this case’s adjudication (which would, of course, also be unlawful, *see supra*). With respect to Mr. Chavez Barrios’ request that the Court enjoin his transfer beyond the end of this case (*i.e.*, even if it denies his request for release), *see* Pet. at 26, ECF 1, that injunction’s purpose would equally be to protect his health and safety, not to impede execution of a valid removal order.¹⁶

B. 8 U.S.C. § 1252(a)(2)(B)(ii) Also Does Not Bar Any Transfer Injunction

Any argument that 8 U.S.C. § 1252(a)(2)(B)(ii) precludes an injunction of Mr. Chavez Barrios’ transfer, Opp. at 15-16, is equally misguided. As the Supreme Court stated in *Kucana v. Holder*, courts interpreting § 1252(a)(2)(B)(ii) must apply the “presumption favoring

¹⁶ An order enjoining transfer could also explicitly carve out an exception for the limited transfer necessary during the brief period of actually enforcing any future valid, executable removal order.

interpretations of statutes [to] allow judicial review ... absent clear statement,” so the statute only precludes jurisdiction where Congress explicitly “set out the Attorney General’s discretionary authority.” *Id.* at 237, 247; *accord Mejia Rodriguez v. DHS*, 562 F.3d 1137 (11th Cir. 2009).

Here—as nearly every circuit court to consider this issue (and every one to consider it post-*Kucana*) has agreed—8 U.S.C. § 1231(g) does *not* explicitly specify the Attorney General’s discretionary authority over places of confinement, much less transfer. *Ozturk*, 136 F.4th at 395; *Reyna as next friend of J.F.G. v. Hott*, 921 F.3d 204, 209 (4th Cir. 2019); *Aguilar v. ICE.*, 510 F.3d 1, 20 (1st Cir. 2007). Rather, 8 U.S.C. § 1231(g)(1) simply provides that “[t]he Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal.” As the Second Circuit recently noted, “[f]ar from specifying discretion, § 1231(g) uses the obligatory ‘shall’ rather than a permissive ‘may.’ This stands ‘in stark contrast to other sections of the INA,’ which both use permissive verbs and include additional language specifying that those decisions that are within the Attorney General or DHS Secretary’s discretion.” *Ozturk*, 136 F.4th at 395 (citing *Aguilar*, 510 F.3d at 20). The Eleventh Circuit reached the exact same conclusion about another INA provision using the same language. *Brasil v. Sec’y, DHS.*, 28 F.4th 1189, 1193 (11th Cir. 2022) (contrasting use of “shall” and “may”).

Furthermore, “‘§ 1231(g) does not address transfers [of ICE detainees] *at all*,’ and it surely does not ‘*explicitly* grant the Attorney General or the Secretary of Homeland Security discretion with respect to transfers.’” *Ozturk*, 136 F.4th at 396 (citation omitted) (emphases in original). So “*even if* the discretionary authority to transfer a detainee between facilities is contemplated under § 1231(g), such authority is merely implied.” *Id.*; *see also Aguilar*, 510 F.3d at 20.¹⁷ Accordingly, § 1252(a)(2)(B)(ii) does not bar injunction of Mr. Chavez Barrios’ transfer.

¹⁷ Respondents-Defendants cite a single contrary circuit court decision, *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999), but it is pre-*Kucana* and, even then, “a minority view.” *Aguilar*, 510 F.3d at 20; *see also Zhao v.*

III. Mr. Chavez Barrios Will Face Irreparable Harm Without a TRO, Which Outweighs the Minimal Harm an Injunction Might Cause the Government

Respondents-Defendants do not dispute that Mr. Chavez Barrios' continued detention will cause him irreparable harm. And their sole argument regarding the irreparable harm of his transfer or unlawful removal is that "even if Petitioner is transferred, he would still have access to counsel" and the procedures of the now-vacated injunction in *DVD*. Opp. at 19-20. They do not rebut the evidence of harm from serious remote access issues at other detention centers, *see* TRO MOL at 10, n.8; obstacles to Mr. Chavez Barrios' ability to develop his claims and this Court's ability to determine them; Mr. Chavez Barrios' exacerbated PTSD; and serious risks to Mr. Chavez Barrios' physical safety. *Id.* at 8-12. Respondents-Defendants also present no evidence of any specific interest in transferring Mr. Chavez Barrios, as opposed to one of more than 56,000 individuals in their custody,¹⁸ nor show any government or public interest in detaining someone who cannot be removed anytime soon. *See* Opp. at 20. To the extent they paint Mr. Chavez Barrios as flight risk or danger, *id.*, this is belied by ICE's contrary determination two years ago and Mr. Chavez Barrios' upstanding behavior since, *see supra*. The real public interest lies in ensuring that the government does not detain or remove any individual in violation of the law. *Nken v. Holder*, 556 U.S. 418, 436 (2009).

CONCLUSION

For these reasons, the Court should order Mr. Chavez Barrios' immediate release or grant a TRO pending any further decision on his petition/complaint.

Gonzales, 404 F.3d 295, 303 n. 6 (5th Cir. 2005); *Spencer Enters., Inc. v. United States*, 345 F.3d 683, 691 (9th Cir. 2003) (both also rejecting *Van Dinh*).

¹⁸ *See* TRAC IMMIGRATION, IMMIGRATION DETENTION QUICK FACTS, <https://tracreports.org/immigration/quickfacts/> (last visited June 25, 2025).

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