UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO: 25-CV-23201 GAYLES

LUIS ALONSO ESPINOSA-SORTO,

Petitioner,

vs.

JUAN AGUDELO, Interim Field Office Director, U.S. Dept. Of Homeland Security Immigration and Customs Enforcement and Removal Operations Miami Field Office; TODD M LYONS, Acting Director U.S. DHS ICE; KRISTI NOEM, Secretary DHS; PAMELA J. BONDI, U.S. Attorney General; and U.S. CITIZENSHIP AND IMMIGRATION SERVICES,

Defendants.
_____/

EMERGENCY MOTION FOR EVIDENTIARY HEARING AND PRODUCTION OF EVIDENCE AND IMMEDIATE GRANT OF THE PETITION

PROCEDURAL UPDATE

Since the filing of the original Emergency Motion for Evidentiary Hearing and Production of Evidence, USCIS has issued a Notice of Intent to Deny (NOID) Plaintiff's U visa application and one for Plaintiff's Application for Advance Permission to Enter as Nonimmigrant, citing alleged gang affiliation. USCIS has removed Plaintiff's petition from the waitlist, but this is not a final decision unless a response is not received on or before October 18, 2025. *See* Dkt. No. 16-1. The NOID requests a full and complete explanation of Plaintiff's gang membership or affiliation. It states USCIS cannot make a favorable determination without thoroughly exploring gang affiliation or involvement. This development renders the prior motion no longer premature and necessitates immediate judicial intervention to ensure Petitioner's due process rights are protected.

INTRODUCTION / STATEMENT OF EMERGENCY

The response deadline of October 18 falls *after* the scheduled October 1 hearing, creating an urgent procedural crisis. On August 13, 2025, Respondents filed their Supplemental Memorandum in response to this Court's July 30, 2025, order directing them to detail the circumstances surrounding Petitioner Luis Alonso Espinoza-Sorto's deferred action status and the process by which that status may be revoked to effectuate removal. In their filing, Respondents assert that Petitioner's placement on the U visa waiting list and grant of deferred action do not preclude Immigration and Customs Enforcement (ICE) from executing a final order of removal. They further contend that ICE has the authority to detain Petitioner under 8 U.S.C. § 1231(a)(6) based on an alleged association with the transnational criminal organization MS-13, and that USCIS retains discretion to remove Petitioner from the waiting list. Respondents also note that ICE has recently initiated communications with USCIS to request expedited adjudication of the pending U visa and removal from the waiting list, while USCIS has requested additional documentation to support such action. On August 18, 2025, Plaintiff filed an Emergency Motion, and the Court did not find an evidentiary hearing was warranted at that time.

On September 15, 2025, USCIS issued a Notice of Intent to Deny (NOID), requiring Plaintiff to fully explain any alleged gang affiliation. Petitioner respectfully renews the request for an emergency evidentiary hearing, immediate production of evidence, and expedited grant of the habeas petition. It is evident that Respondents have submitted materials to USCIS that triggered this adjudication, yet Plaintiff has not been provided with access to those documents. Without knowing the basis of the MS-13 allegation, Plaintiff cannot meaningfully respond, thus violating Petitioner's constitutional right to due process. USCIS will not release the evidence supporting the NOID's allegations. Specifically, the USCIS Policy Manual, Vol. 1, Part E, Ch. 6(G), states that while USCIS must provide notice and an opportunity to rebut derogatory information unknown to

the benefit requestor, it also acknowledges that certain categories of information, including classified materials, records owned by other agencies, and information protected by statute, may not be disclosed, even if relied upon in an adverse decision. Thus, because USCIS will not provide the underlying evidence through administrative channels, Plaintiff has no choice but to seek judicial intervention. The need to produce evidence is emergent, as Plaintiff only has 26 days to respond to the NOID and currently lacks access to any evidence to rebut the allegations. Petitioner has confirmed that the evidence utilized in the NOID originated from Respondents' agency.

This Court's stay of removal expires on October 1, 2025, and Petitioner faces imminent harm of removal without being afforded the opportunity to meaningfully respond to the allegations. Plaintiff is the indirect victim of a devastating crime, where his five-month-old baby and five-year-old stepdaughter tragically lost their lives due to the reckless actions of another, forming the basis of his U visa petition. To remove him from the U visa waitlist and now jeopardize that petition based on unsubstantiated allegations of gang affiliation, which Plaintiff vehemently denies, and to pursue removal without disclosing the evidence or providing a fair opportunity to rebut it, constitutes a clear violation of due process.

In light of these developments, Plaintiff respectfully requests that this Court order Respondents to produce Deportation Officer Jurdi, or in the alternative, Assistant Field Office Director (AFOD) Parra, to testify at a habeas corpus hearing regarding the facts stated in her declaration, the basis for her knowledge thereof, and the evidence submitted to USCIS. Additionally, Plaintiff requests that the Court order Respondents to produce Plaintiff *ad testificandum* at the hearing, so that he may respond directly to any allegation that he is associated with the Transnational Criminal Organization MS-13, or any other factual basis for his present detention that Respondents may assert.

ARGUMENT

I. Petitioner's deferred action bars removal because Respondents misapply 8 C.F.R. § 214.14(c)(1)(ii), which does not govern individuals already granted deferred action and placed on the U Visa Waiting List.

8 C.F.R. § 214.14(c) governs the application procedures for U nonimmigrant status. 8 C.F.R. § 214.14(c)(1)(ii) states the filing of a U-visa has no effect on ICE's authority to execute a final order. These provisions apply narrowly to individuals who have merely filed a U-visa petition. It does not address the legal status or protections afforded to individuals who have already been placed on the U visa waiting list and granted deferred action under 8 C.F.R. § 214.14(d)(2). A petitioner may be removed from the waiting list, and the deferred action may be terminated at the discretion of USCIS. *See* 8 C.F.R. § 214.14(d)(3).

Petitioner is not simply a filer. USCIS placed him on the waiting list in 2019 and granted him deferred action, which is a formal act of prosecutorial discretion that delays removal and confers tangible benefits, including eligibility for work authorization and protection from unlawful presence penalties. *See* Dkt. No. 1-5. Thus, the Government's statement that the U visa regs indicate that ICE can proceed with removal, under 8 C.F.R. § 214.14(c)(1)(ii), has no merit as Petitioner is not merely a filer, his U-visa application is at the stage which it is governed by 8 C.F.R. § 214.14(d) instead. *See* Dkt. No. 12, p. 4.

Furthermore, Respondents contend 8 C.F.R. § 214.205(g) extends a different form of deferred action to T visa applicants than to U visa applicants. This assertion is inconsistent with the statutory language of 8 U.S.C. § 1227(d), Administrative Stay. Under the statute, Congress expressly placed both U and T visa applicants in the same category when addressing protection from removal, authorizing those who set forth a *prima facie* case for approval to seek an administrative stay until the approval of their application. *See* 8 U.S.C. § 1227(d)(1)(A). The denial of the stay does not preclude the petitioner from applying for a stay of removal, deferred action,

or continuance of removal proceedings. *See id.* at (d)(2). By pairing "stay of removal" and "deferred action" in the same statutory subsection, Congress recognized both as functionally equivalent removal-blocking mechanisms. § 1227(d)(2) thus reflects a congressional intent that deferred action, whether under a U or T visa application, operates to halt removal for the duration of that protection. As the Supreme Court confirmed in *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999), deferred action means "no action will thereafter be taken to proceed against an apparently deportable alien." Respondents' attempt to diminish U visa deferred action status, *which is still in effect*, to mere "low priority" status ignores both the statutory design and binding Supreme Court precedent.

Lastly, this interpretation was recently affirmed in *Ayala v. Bondi*, No. 2:25-cv-01063-JNW-TLF (W.D. Wash. Aug. 4, 2025), where the court granted a writ of habeas corpus and ordered the immediate release of Mr. Ayala from custody. The court found that established precedent defines deferred action as the Government's decision not to proceed with removal and thus, Ayala had demonstrated a likelihood of success on his claim that this protection makes his continued detention unlawful. The court rejected the government's argument that deferred action merely lowers removal priority, holding instead that deferred action constitutes a binding commitment by DHS not to remove the individual absent formal termination. The court emphasized that ICE's continued detention of the petitioner, despite USCIS's grant of deferred action, was unlawful and contrary to the regulatory and constitutional framework governing immigration enforcement.

This Court should adopt the same analysis. Petitioner, like *Ayala*, has been granted deferred action by USCIS and remains on the U visa waiting list. Petitioner's U visa waitlist notice, like *Ayala's* notice, stated that deferred action is "an act of administrative convenience to the government which gives some cases lower priority for removal." Dkt. No. 1-6, p.42. While

Respondents may attempt to distinguish *Ayala* by pointing out that the petitioner's stay request was denied as redundant due to his deferred action status, that distinction only strengthens Petitioner's case. Unlike *Ayala*, Petitioner's stay of removal was previously granted on February 22, 2019, and his deferred action status was affirmatively recognized by USCIS. His recent stay request was denied without explanation, despite no change in circumstances other than ICE's unsubstantiated allegation of MS-13 association. Thus, unlike in *Ayala*, where the denial of the stay was based on redundancy, Petitioner's denial lacks any procedural or substantive justification.

Furthermore, Respondents may contend that the recently issued NOID removes Petitioner from the U Visa waitlist and thus he no longer has deferred action. This contention would be incorrect. According to USCIS Policy Manual, Volume 3, Part C, Ch. 6, a NOID is issued when USCIS determines that a petitioner may be ineligible for waitlist placement based on file review. Petitioners are then given an opportunity to respond and submit additional evidence to address the concerns raised. Only after reviewing the response does USCIS make a final determination and, if warranted, issue a formal denial. Petitioner has until October 18, 2025, to respond fully and completely to the NOID. Until that deadline passes and USCIS issues a final decision, Petitioner remains on the waiting list and retains deferred action protections. Removal or detention based on a premature assumption of denial violates both regulatory procedure and due process.

This Court should follow *Ayala's* reasoning and recognize that deferred action under the U visa waiting list is not merely symbolic; it is a legal and procedural protection that halts removal unless and until USCIS formally terminates it. ICE's attempt to remove Plaintiff while USCIS continues to recognize his deferred action status is unlawful, arbitrary, and contrary to both statutory intent and binding precedent. Moreover, ICE's conduct underscores the arbitrary nature of this enforcement action. They have now followed through with submitting documents to USCIS,

documents they previously claimed were still being gathered, yet Petitioner has not been given access to any of these materials. *See* Dkt. No. 12-1 p. 3. These undisclosed submissions appear to have prompted USCIS's issuance of a Notice of Intent to Deny (NOID), but without knowing what ICE provided, Petitioner is deprived of a meaningful opportunity to respond. This lack of transparency and procedural fairness further illustrates the unlawful and constitutionally intolerable nature of Petitioner's continued detention.

II. Petitoner's detention is premature and speculative because ICE is still building its case for revocation of deferred action, violating due process and exceeding the scope of lawful detention under 8 U.S.C. 1231 and Zadvydas.

Petitioner is currently detained under 8 U.S.C. § 1231, which governs post-final order detention. However, ICE's continued detention of Petitioner is both premature and speculative, as it is based not on a finalized removal plan but on an ongoing and incomplete effort to revoke his deferred action status. ICE has only recently initiated communication with USCIS regarding revocation, and USCIS has not yet made any final determination. Dkt. No. 12-1, p. 2-3. In fact, USCIS has requested additional documentation from ICE, which ICE is still gathering. *Id.* USCIS has issued a Notice of Intent to Deny Petitioner's U visa application; however, no final decision has been made on the petition, and adjudication remains pending. Petitioner continues to hold deferred action status, as USCIS has not formally terminated it. ICE has also violated procedural norms and Petitioner's right to representation during the custody review process. On July 24, 2025, undersigned counsel requested advance notice of any informal custody review to ensure availability. *See* Exhibit 1, p. 1. After the July 30th hearing where Respondents' counsel claimed the Post-Order Custody Review (POCR) interview had occurred, Deportation Officer (DO) Jurdi clarified that it had not and would be scheduled around August 31, 2025. *See* Exhibit 2. However, on August 12, 2025, at 6:12 PM, DO Jurdi abruptly notified counsel that the interview would take

place the next day, without specifying a time. Counsel responded the same evening and on August 13, 2025, requesting rescheduling to Monday, August 18, 2025, due to unavailability, but received no reply. *See* Exhibit 3. Undersigned counsel later confirmed with Petitioner that the interview occurred without counsel present. During the interview, an unknown ICE officer photographed Petitioner's tattoos and accused him of MS-13 affiliation, which he denied, stating his record was clean. This conduct underscores ICE's lack of evidentiary basis and its use of detention to retroactively gather support for its revocation request to USCIS.

Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that detention under § 1231 must be reasonably related to the purpose of removal and cannot be indefinite or speculative. The Court stated detention does not "bear a reasonable relation to the purpose for which the individual was committed" when removal is not practically attainable in the reasonably foreseeable future. *Id.* at 690. The Court further explained that the Government must present more than the mere possibility of eventual removal; detention based on "mere conjecture" or "future contingencies" that may never occur is insufficient. *Id.* at 699–700. The Supreme Court's decision in *Demore v. Kim*, holds that detention is only constitutionally permissible when it is brief, justified, and closely tied to removal proceedings. 538 U.S. 510 (2003). The Court emphasized that detention must be part of a prompt and active removal process, not a speculative or investigative effort. *Id.* In other words, speculation encompasses predictions unsupported by concrete evidence, reliance on unverified allegations, or assumptions about future events without proof that they will in fact occur in the reasonably foreseeable future.

The legal standard established in *Zadvydas* and *Demore* make clear that detention under 8 U.S.C. § 1231 must be justified by a realistic and imminent prospect of removal. In Petitioner's case, that prospect does not exist. ICE is not detaining him because removal is imminent; it is

detaining him while it builds a case to potentially revoke his deferred action. ICE detained Petitioner on June 17, 2025. *See* Dkt. No. 9-1. On June 23, 2025, Petitioner's Order of Supervision (OSUP) was revoked on an allegation of being associated with the transnational criminal organization, MS-13 gang. *See* Dkt. No.9-7. ICE has failed to produce any new or credible evidence to support this claim. The only new documents in Petitioner's file are internal documents, including two Declarations from his DO, revocation of his OSUP, the denial of his stay application, and the NOID. All other exhibits were already part of Petitioner's file prior to detention.

Under *Zadvydas*, detention must be reasonably related to the purpose of removal and cannot be based on "mere conjecture" or "future contingencies." ICE's current posture, detaining Plaintiff while it attempted to build a case to revoke his deferred action and remove him from the U visa waiting list, falls squarely within the category of speculative detention prohibited by the Court. There is no finalized removal plan and no indication that removal is practically attainable in the reasonably foreseeable future. *See Fornalik v. Perryman*, 223 F.3d 523 (7th Cir. 2000) (holding an individual is not subject to removal unless and until their deferred action is formally revoked). ICE has not provided any individualized evidence linking Petitioner to MS-13, nor has it shown that removal is imminent. The speculative nature of the gang allegation, unsupported by exhibits or documentation, fails to meet the due process standards articulated in *Zadvydas* and *Demore*. Detention based on unverified allegations and assumptions about future USCIS actions does not constitute a lawful basis under § 1231. His detention, revocation of OSUP, denial of his stay, and now intent to deny his U visa petition are all on reliance on unverified allegations.

Furthermore, as detailed in the USCIS Policy Manual, Vol. 3, Part C, Ch. 6, individuals placed on the U-visa waiting list through the Bona Fide Determination (BFD) process are granted deferred action, and revocation of this status is a formal process. The manual emphasizes that

USCIS may terminate deferred action only after providing notice, an opportunity to respond, and consideration of any evidence presented, ensuring that the grant is not revoked arbitrarily. USCIS cites to 8 C.F.R. § 274a.14 as their authorization to revoke employment authorization documents given under the BFD process. 8 C.F.R. § 274a.14(b)(2) provides that if a district director determines that employment authorization should be revoked prior to its expiration, the Service must serve a written notice of intent to revoke, citing the reasons for revocation. The individual is then granted a 15-day period to submit countervailing evidence, and only after this process may the revocation be finalized.

USCIS has now removed Petitioner from the U visa waiting list and issued a Notice of Intent to Deny (NOID). Critically, the NOID fails to identify the specific evidence USCIS relies upon, leaving Petitioner unable to meaningfully rebut the allegations. The NOID states that Plaintiff was noted as a member of MS-13 upon his arrest on June 17, 2025, yet later asserts that it would not be in the public or national interest to waive Plaintiff's grounds of inadmissibility due to his past or current membership in the 18th Street gang. Pursuant to USCIS Policy Manual, volume 1, Part E, Ch. 6(G), it will not be possible for Plaintiff to obtain clarity or evidence on the derogatory information regarding the allegations, as these are records owned by other agencies, the Respondents. The response deadline of October 18 falls *after* the scheduled October 1 hearing, creating an urgent procedural crisis. USCIS has stated that if no response is received by the deadline, it will issue a final decision based solely on the existing record, yet Plaintiff has not been provided access to that record, nor will he be provided it through USCIS. As a result, Plaintiff is left to respond to serious allegations without knowing the factual basis, which undermines his ability to defend himself and violates fundamental principles of due process.

This lack of transparency violates the procedural safeguards outlined in the USCIS Policy Manual and 8 C.F.R. § 274a.14(b)(2), which require notice, an opportunity to respond, and consideration of countervailing evidence before revocation of deferred action or employment authorization. Under these circumstances, continued detention is not "reasonably related to the purpose of removal," as required by *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Court's immediate intervention is necessary to prevent irreparable harm and ensure that Petitioner's due process rights are protected.

Plaintiff is currently held in immigration detention not because removal is imminent, but because ICE is pursuing an unsubstantiated allegation and awaiting further action from USCIS. USCIS has only recently issued a Notice of Intent to Deny, and the agency is still awaiting a response before making any final determination. This means Plaintiff is being detained not for removal, but for investigation, based on evidence that has not been disclosed and a process that remains incomplete. Such speculative and indefinite detention is precisely what the Supreme Court prohibited in *Zadvydas* and *Demore*, where it held that detention must be reasonably related to the purpose of removal and cannot be prolonged without foreseeable removal. Here, Petitioner's detention is not supported by a final removal order, but rather while ICE attempts to build a case to revoke his deferred action status. USCIS has only recently issued a Notice of Intent to Deny, and no final decision has been made. This is not prompt adjudication, it is detention in search of justification, which falls outside the bounds of what *Demore* permits. When detention is prolonged and based on future contingencies, it violates the due process principles articulated in both *Demore* and *Zadvydas*.

III. Respondents' response demonstrates unlawful detention and an attempt to moot the habeas petition thus Petitioner requests an evidentiary hearing to examine the declarant and the basis for detention.

Petitioner's detention is not only speculative and procedurally defective, but Respondents' own response further demonstrates that the detention is being maintained without lawful justification and with the apparent purpose of mooting this habeas petition. The timeline and interactions between ICE and USCIS show that Petitioner was detained before ICE had any substantiating evidence to support its detention of Petitioner and its request for revocation of deferred action, confirming that the detention was speculative from the onset.

"In order to actually seek habeas relief, a detainee must have sufficient time and information to reasonably be able to contact counsel, file a petition, and pursue appropriate relief." *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1366 (2025). The Court condemned removal procedures that provided only minimal notice and no meaningful opportunity to contest detention or removal, holding that such practices violate the core requirements of due process. *See id.* Under 28 U.S.C. § 2243, the person detained may deny any of the facts set forth in the return or allege any other material facts. The Court is authorized to "summarily hear and determine the facts and dispose of the matter as law and justice require." *Id.* These provisions affirm the judiciary's duty to promptly assess the legality of detention, especially where liberty is at stake. Complementing this, 28 U.S.C. § 2246 permits the use of Declarations in habeas proceedings but guarantees the right to challenge them through interrogatories or cross-examination.

Respondents' continued detention of Petitioner violates the due process principles articulated in *A.A.R.P. v. Trump* and the statutory mandates of 28 U.S.C. §§ 2243 and 2246. ICE has failed to provide any substantiated evidence linking Petitioner to MS-13 or justifying his detention. Instead, the government relies solely on two Declarations from DO Jurdi, without producing any corroborating documentation. One Declaration from DO Jurdi states Petitioner was detained to effectuate his removal, and another alleges MS-13 association without providing any supporting

evidence. Dkt. No. 9-8, p.2 and 12-1. The August 13, 2025, DO Jurdi declaration states in a conclusory manner that "ERO revoked Petitioner's order of supervision because he is associated with the Transnational Criminal Organization MS-13." Dkt. No. 12-1. The Jurdi Declaration provides no basis for DO Jurdi's purported knowledge, nor any indicia of reliability.

The Jurdi Declaration states that the affiant bases her Declaration "on my personal knowledge, reasonable inquiry, and information obtained from various records, systems, databases, and other DHS employees, and information portals maintained and relied upon by DHS in the regular course of business," *id.* at ¶ 4; but does not state which of the above means—some of which are admissible, some of which are hearsay, and some of which violate the Best Evidence Rule—she used to ascertain information that Petitioner is associated with MS-13. Thus, it is impossible for this Court to evaluate the reliability of DO Jurdi's statement regarding Petitioner's alleged association with MS-13 and whether any factual basis exists for the allegation. Accordingly, for this Court to give any weight to DO Jurdi's Declaration, Respondents should be ordered to produce DO Jurdi or in the alternative, Assistant Field Office Director (AFOD) Parra before this Court at a habeas corpus hearing, to testify to the facts stated in her declaration and the basis for her knowledge thereof. In addition, Respondents should also be ordered to produce Petitioner *ad testificandum* for the habeas corpus hearing, so that Petitioner may respond directly to any allegation that he is associated with the Transnational Criminal Organization MS-13, or any other factual basis for his present detention that Respondents may state at the habeas corpus hearing.

Alternatively, should this Court choose to decide the matter on the papers, Petitioner respectfully requests that DO Jurdi's Declaration be given extremely limited weight. The government's conduct suggests a strategy of delay; detaining Petitioner first, then seeking to remove him from the U visa waiting list without due process, all while attempting to moot this

habeas petition. This is not only unlawful but constitutionally intolerable. The lack of evidence and the sequence of events reveal that ICE detained Petitioner without a factual basis and is now attempting to retroactively justify that detention by building a case after the fact.

Respectfully submitted on this 22nd day of September 2025,

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CERTIFICATION OF EMERGENCY

I hereby certify that, as a member of the Bar of this Court, I have carefully examined this matter, and it is a true emergency, and that the urgency has not been caused by my or the party's own dilatory conduct. After reviewing the facts and researching applicable legal principles, I certify that this motion in fact presents a true emergency (as opposed to a matter that may need only expedited treatment) and requires an immediate ruling because the Court would not be able to provide meaningful relief to a critical, non-routine issue after the expiration of seven days. I understand that an unwarranted certification may lead to sanctions. I further certify that I have made a bona fide effort to resolve this matter without the necessity of emergency action.

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