UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HELEN SARAHI FUNES GAMEZ,

Petitioner,

v.

LaDeon FRANCIS, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Kristi NOEM in her official capacity as Secretary of Homeland Security; Pam BONDI, in her official capacity as Attorney General of the United States, in their official capacities,

Respondents.

Case No. 25 Civ. 7429 (PAE)

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO THE PETITION AND PETITIONER'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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The government respectfully submits this memorandum of law in opposition to the application of petitioner Helen Sarahi Funes Gamez ("Petitioner") for a temporary restraining order and preliminary injunction filed on September 12, 2025, and in opposition to the petition for a writ of habeas corpus (the "Petition").

PRELIMIMARY STATEMENT

Petitioner is a native and citizen of Honduras. She is subject to a reinstated order of removal, meaning that (i) she had previously been ordered removed from the United States on November 4, 2004, more than twenty years ago; (ii) she was removed from the United States on August 7, 2009; and (iii) she unlawfully reentered the country on May 21, 2023. After her re-entry, and after the Government reinstated her order of removal, ICE permitted her to leave custody on an Order of Supervised Release ("OSUP"). ICE subsequently revoked the OSUP on September 8, 2025, because ICE had obtained a travel document for Petitioner and was preparing to remove her imminently.

There is no basis to require that ICE release Petitioner while it is in the process of removing her. The OSUP did not create any liberty interest whereby Petitioner could remain out of detention and subject to deportation. There is thus no constitutional infirmity with ICE's decision to revoke the OSUP when it was preparing to deport her to Honduras. Moreover, ICE complied with its regulatory authority addressing revocation of an OSUP. Accordingly, Petitioner is not likely to succeed on the merits of her Petition. The allegations of irreparable harm proffered by Petitioner are essentially these same alleged constitutional and regulatory violations – but because the Government is in compliance with the Constitution and its regulatory authority, Petitioner has failed to demonstrate irreparable harm. Finally, the public interest is served by the Government's faithful execution of the immigration laws, and Petitioner's detention is in furtherance of this

purpose. Petitioner is subject to a reinstated order of removal, and ICE intends to accomplish that removal while complying with all statutory and regulatory obligations.

As the Government has filed a return to the Petition, and the relief sought in the temporary restraining order and the preliminary injunction is the same as the ultimate relief requested in the case, the Court should deny both the requests for preliminary relief as well as the ultimate relief sought in the Petition.

BACKGROUND

A. Initial Removal of Petitioner from the United States

On June 9, 2004, a Border Patrol Agent with the former U.S. Border Patrol ("USBP") encountered Petitioner and her mother, Ana Iris Gomez-Pascual ("Gomez-Pascual"), near the Gateway Port of Entry in Brownville, Texas. *See* Declaration of Stephen Daniel Allport, dated September 19, 2025 ("Allport Decl.") ¶ 4. Petitioner was ten years old at that time. Gomez-Pascual admitted to Border Patrol that she and Petitioner are citizens and nationals of Honduras; that they had entered the United States from Mexico without inspection; and that they did not have necessary legal documents to enter, pass through, or to remain in the United States. *Id.* Upon determining that Petitioner and her mother had unlawfully entered the United States, USBP transported Petitioner and her mother to the Brownsville Border Patrol Station for processing. *Id.*

On June 9, 2004, during processing, USBP advised Gomez-Pascual and Petitioner of their rights and of a hearing scheduled before an Immigration Judge in Harlingen, Texas on November 4, 2004. *Id.* ¶ 5. On July 9, 2004, Petitioner and her mother were released on their own recognizance because of the lack of camp space for family units. *Id.* ¶ 7. However, on November 4, 2004, Petitioner and her mother failed to appear at the immigration hearing scheduled for that

day. *Id.* ¶ 8.

After determining that Petitioner had adequate notice of the hearing, the Immigration Judge entered an in-absentia order on November 4, 2004, directing her removal to Honduras. *Id.* The Government sent the in-absentia order directing Petitioner's removal to Honduras, care of her mother, to her last known address in Holyoke, Massachusetts. *Id.* ¶ 9. It was returned undeliverable. *Id.* On or about December 30, 2004, ICE issued and mailed a notice to the Petitioner, in care of her mother, that directed Petitioner to report to an immigration officer for in Harlingen, Texas, on January 31, 2005, for removal. *Id.* ¶ 10. The notice was returned undeliverable. *Id.*

On June 7, 2009, Petition was a passenger in one of two vehicles stopped by a Pennsylvania State Trooper on I-80 near Clintonville, Pennsylvania. *Id.* ¶ 11. The Pennsylvania State Trooper sought assistance from Border Patrol to aid in translation as the vehicle occupants did not speak fluent English. *Id.* After the vehicle occupants had been transported to the Franklin Barracks of the Pennsylvania State Police, the Border Patrol agents conducted brief interviews of the vehicle occupants. *Id.* Following the interviews, eleven individuals including Petitioner were transported to the Border Patrol Station for further questions and processing. *Id.* At the station, system checks revealed that Petitioner had been ordered removed. *Id.* As such, the Petitioner was processed for removal as an unaccompanied minor. *Id.*

On June 8, 2009, following processing, Petitioner was turned over to ICE custody and placed in an ICE residential center for family units in Florida, where she remained pending removal. *Id.* ¶ 12. Petitioner was removed to Honduras via an ICE charter flight on August 7, 2009. *Id.* ¶ 13.

B. Petitioner Re-Entered the United States and Is Subject to a Reinstated Order of Removal

On May 21, 2023, a patrol agent with U.S. Customs and Border Protection ("CBP") encountered Petitioner, her spouse, and her child near Eagle Pass, Texas. *Id.* ¶ 14. Upon questioning, the Border Patrol Agent determined that Petitioner and her family had unlawfully entered the United States from Mexico. *Id.* Petitioner admitted to being a citizen and national of Honduras with no right to be in or remain in the United States legally. *Id.* Thereafter, CBP transported Petitioner and her family to the Laredo Sector Enhanced Centralized Processing Center in Laredo, Texas for further processing. *Id.*

Also on May 21, 2023, Petitioner was processed for Reinstatement of Prior Order of Removal pursuant to INA § 241(a)(5), 8 U.S.C. § 1231(a)(5). *Id.* ¶ 15. Following processing, Petitioner, along with her family, was released due to humanitarian and safety issues with overcrowding and lack of bedspace. *Id.* The Petitioner was served with an Order of Supervision ("OSUP") that sets forth conditions of her release, including reporting as directed to ICE offices periodically for scheduled check-ins. *Id.*

On July 14, 2025, the Petitioner, through counsel, submitted a Form I-246, Application for a Stay of Deportation or Removal to ICE. *Id.* ¶ 16. In the request for a stay of removal, Petitioner expressed her fear of harm if returned to Honduras, and she stated that her spouse and child were granted asylum based on the same fears on February 20, 2025. *Id.* Petitioner further noted that her spouse has submitted a Form I-730, Refugee/Asylum Relative Petition on her behalf. *Id.* On September 3, 2025, upon consideration of the Petitioner's application for a stay of removal, ICE denied the Petitioner's request for a stay of removal and referred Petitioner for a reasonable fear interview with U.S. Citizenship and Immigration Services ("USCIS"), pursuant to 8 C.F.R.

§ 1208.31. *Id.* ¶ 17.

On September 8, 2025, Petitioner reported to 26 Federal Plaza, New York as directed. Petitioner was accompanied by counsel and her child. *Id.* ¶ 18. Petitioner was served with a Notice of Revocation of Release (the "Notice") and advised that her OSUP was revoked. *Id.* The Notice stated that "your order of supervision has been revoked and you will be detained in the custody of U.S. Immigration and Customs Enforcement (ICE) at this time." *Id.* It further explained: "This decision has been made based on a review of your official alien file and a determination that there are changed circumstances in your case, specifically that ICE has procured a travel document on your behalf and your removal is now imminent." *Id.* A certificate of service reflects that the Notice was served on Petitioner at 4:00 p.m. on September 8, 2025. *Id.*

ICE thus detained Petitioner on September 8, 2025, to effectuate her removal pursuant to her reinstated order of removal. *Id.* ¶ 19. Specifically, the Application for a Stay of Deportation or Removal to ICE filed on July 14, 2025, contains a copy of Petitioner's passport. *Id.* That provides proof of Petitioner's Honduran citizenship and facilitates her removal to Honduras, which accepts copies of passports to accept citizens deported from the United States. *Id.* Moreover, the Application for a Stay of Deportation or Removal was denied on September 3, 2025. *Id.* Because Petitioner claimed a fear of return to Honduras, Petitioner is entitled to receive a Reasonable Fear Interview that USCIS will conduct prior to removing Petitioner. *Id.*

Also on September 8, 2025, Petitioner was provided with an informal interview at which she noted she would leave her children in the care of her husband and requested a reasonable fear interview. *Id.* ¶ 20. Deportation Officer K. Haynes reported that on September 8, 2025, DO Haynes "conducted an initial informal interview of the detainee listed above in order to afford the alien an

opportunity to respond to the reasons for revocation of his or her order of supervision stated in the notification letter. At the interview, the alien made the following oral response regarding the reasons for revocation: **I would like to leave my kids with my husband and have a reasonable fear interview. I understand I will be detained and receive the interview, and my husband will pick my US citizen child up."** Return Ex. L (emphasis in original).

Prior to being taken into ICE custody, Petitioner contacted her husband and designated him as the caregiver of her children. *Id.* ¶ 20. After her husband arrived to care for their child, the Petitioner was taken into ICE custody. *Id.*

Following processing, Petitioner remained at 26 Federal Plaza, pending transfer to the Richwood Correctional Center in Monroe, Louisiana, where there was available bedspace. *Id.* ¶ 21. There are no ICE detention facilities in the Southern District of New York or the Eastern District of New York that can accommodate placement of female ICE detainees. *Id.* In the morning of September 9, 2025, ICE took Petitioner to Newark Liberty International Airport for a scheduled flight to Oakdale, Louisiana. *Id.* ¶ 22.

Later that day, at approximately 6:06 p.m. GMT, Petitioner was booked into the Richwood Correctional Center, where she remains in custody, pursuant to INA § 241, 8 U.S.C. § 1231, pending a reasonable fear interview and ultimately removal. *Id.* ¶ 23. ICE was also informed on September 9, 2025, of this Court's order restricting removal. *Id.* ¶ 25. Accordingly, Petitioner will remain at Richwood Correctional Center pending a reasonable fear interview and during the pendency of her habeas proceedings. *Id.* Petitioner's reasonable fear interview is scheduled for September 22, 2025. *Id.* ¶ 27.

C. Statutory and Regulatory Background

Pursuant to 8 U.S.C. § 1231, ICE has authority to detain an alien subject to a final removal order. 8 U.S.C. § 1231(a). *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) ("8 U.S.C. § 1231(a), governs the detention, release, and removal of individuals 'ordered removed.'"); *accord Wang v. Ashcroft*, 320 F.3d 130, 145 (2d Cir. 2003) ("8 U.S.C. § 1231, governs the detention of aliens subject to final orders of removal."). An order of removal is final upon the earlier of "(i) a determination by the Board of Immigration Appeals affirming such order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals." 8 U.S.C. § 1101(a)(47)(B). *Chupina v. Holder*, 570 F.3d 99, 103 (2d Cir. 2009) (interpreting § 1101(a)(47)(B) to conclude that "[a]n order of removal is 'final' upon the earlier of the BIA's affirmance of the immigration judge's order of removal or the expiration of the time to appeal the immigration judge's order of removal to the BIA.").

Section 1231 establishes a 90-day "removal period" within which the government generally must secure removal after a removal order becomes final, and during which the government "shall" detain the alien until such removal. *See* 8 U.S.C. §§ 1231(a)(1)(A), (a)(2). When the government is unable to secure removal within the removal period, while detention is no longer mandatory, the government "may" continue to detain four categories of aliens: (1) inadmissible aliens, (2) aliens who are removable for national-security or foreign-policy reasons or for violating entry conditions, status requirements or certain criminal laws, (3) aliens who pose a "risk to the community," and (4) aliens who are "unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6). Aliens who fall outside those categories (or who fall within them but are not detained) are subject to supervision upon release. 8 U.S.C. § 1231(a)(3)&(6).

The Supreme Court addressed ICE's authority to detain aliens after their removal orders become final in *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the Court held that 8 U.S.C. § 1231(a) authorizes immigration detention for a period reasonably necessary to accomplish the alien's removal from the United States. 533 U.S. at 699-700. The Supreme Court recognized six months as a presumptively reasonable period of time to allow the government to accomplish an alien's removal. *Id.* at 701. However, the Court did not require the government to release every alien whose detention exceeds six months. Rather, the Court held:

> After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as "reasonably foreseeable future" conversely would have to shrink. This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

Id. (emphasis added).[1] Thus, the Supreme Court placed the initial burden on the alien. *Id.* If the alien fails to meet that burden, or if the government rebuts the alien's showing, then continued detention is permissible. *Id.*

Pursuant to the relevant regulations, ICE "shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section." 8 C.F.R. § 241.4(*l*)(2) The regulation permits ICE to exercise its discretion to revoke release when, in the opinion of the revoking official: "(i) the purposes of release have been served; (ii) the alien violates any condition of release;

[1] In *Zadvydas*, the concern of "indefinite detention" arose where the petitioners could not be removed from the United States because their home countries would not accept their repatriation, yet the government continued to detain them. *See Zadvydas*, 533 U.S. at 684-86.

(iii) it is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." *Id.* The regulation does not require advance notice prior to revoking an alien's release pursuant to section 241.4(*l*)(2).[2]

ICE utilizes different review procedures in instances where an alien subject to a final removal order has "provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed . . . in the reasonably foreseeable future," 8 C.F.R. § 241.13(a). In those circumstances, ICE may choose to release an alien subject to "appropriate conditions of supervision." 8 C.F.R. § 241.13(g)(1). ICE "may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). ICE also has "discretion" to "grant a stay of removal or deportation for such time and under such conditions as [it] may deem appropriate." 8 C.F.R. § 241.6(a).

ARGUMENT

The Court should deny the petition for writ of habeas corpus and the request for a temporary restraining order and preliminary injunction because Petitioner's detention for the purpose of executing a valid, final, 2004 removal order complies with the Constitution as well as all applicable statutes and regulations. Petitioner has already been removed to Honduras once before pursuant to

[2] In contrast, an alien whose release is revoked due to violations of the terms of the conditions of release under section 241.4(*l*)(1) must be notified at the time of revocation of the reasons for revocation, and must be afforded an initial interview "promptly after his or her return to Service custody" to respond to the reasons stated in the notification. 8 C.F.R. § 241.4(l)(1).

an order of removal, she returned illegally to the United States, and she had her order of removal reinstated. ICE is preparing to remove Petitioner. Petitioner's claims—that her detention violates the Due Process Clause of the Constitution and ICE's regulations—all fail. Petitioner is thus not entitled to the relief sought in the Order to Show Cause and the Petition.

I. STANDARD OF REVIEW

"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.'" *Students for Fair Admissions v. U.S. Military Academy at West Point*, 709 F. Supp. 3d 118, 129 (S.D.N.Y. 2024) (quoting *Grand River Enterprises Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007)); *see also Winter v. NRDC*, 555 U.S. 7, 24 (2008) ("A preliminary injunction is an extraordinary remedy never awarded as of right."). To demonstrate entitlement to this extraordinary and drastic remedy, a movant must clearly demonstrate: "(1) irreparable harm absent injunctive relief, (2) a likelihood of success on the merits, [] (3) public interest weighing in favor of granting the injunction," and (4) "that the balance of equities tips in his or her favor." *Hester v. French*, 985 F.3d 165, 176 (2d Cir. 2021) (quotation marks and footnotes omitted). "These [last two] factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Moreover, "a TRO, perhaps even more so than 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.'" *Free Country Ltd. v. Drennen*, 235 F. Supp. 3d 559, 565 (S.D.N.Y. 2016).

The Court should deny the relief sought because Petitioner is unlikely to succeed on the merits, cannot show irreparable harm, and cannot meet the stringent requirements for such relief that would not be in the public interest.

II. PETITIONER IS NOT LIKELY TO SUCCEED ON THE MERITS

A. There Is No Due Process Violation

Petitioner claims that her detention violates her Due Process rights, and that she should be released from detention. But this is simply not correct. The crux of Petitioner's argument appears to be that she has a liberty interest in the continuation of the OSUP, and that revoking it implicates her constitutional rights: Petitioner's Brief ("Br.") at 17 ("Petitioner was *already* under satisfactory conditions to secure her attendance before ICE during adjudication of her family's asylum claims.") But an OSUP does not create a liberty interest for Petitioner, as it is a matter within the Government's discretion. Petitioner is not entitled to the continuation of her OSUP when ICE determined that Petitioner would be removed pursuant to a reinstated order of removal.

The procedural component of the Due Process Clause protects against the deprivation of life, liberty or property without constitutionally adequate procedures. However, the safeguards of the Due Process Clause are not implicated unless Petitioner has been deprived of a constitutionally protected liberty or property interest. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972). Such an interest can be created by the Due Process Clause itself, or by an independent source such as federal statutes or regulations. *See, e.g., Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005) ("Our cases recognize that a benefit is not a protected entitlement if government officials may grant or deny it in their discretion."); *Sealed v. Sealed*, 332 F.3d 51, 55 (2d Cir. 2003). In order for a statute or regulation to create a vested liberty interest, it must confer an entitlement to the relief. *Handberry v. Thompson*, 446 F.3d 335, 353 (2d Cir. 2006). That is, the law must place "substantive limitations on official discretion." *Olim v. Wakinekoma*, 461 U.S. 238, 249 (1983); *see also id.* ("If the decisionmaker is not 'required to base its decisions on objective

and defined criteria,' but instead 'can deny the requested relief for any constitutionally permissible reason or for no reason at all,' the State has not created a constitutionally-protected liberty interest" (quoting *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 358, 466-67 (1981) (Brennan, J., concurring))). There is no constitutionally protected interest if the law permits government officials to grant or deny the benefit in their discretion. *Town of Castle Rock*, 545 U.S. at 756.

It is well-established that an alien has no entitlement, and therefore no protected liberty interest, in discretionary relief from the immigration laws. *See, e.g.*, *Yuen Jin v. Mukasey*, 538 F.3d 143, 156-57 (2d Cir. 2008) (holding that aliens have no "liberty or property interest in asylum that warrants Fifth Amendment protection," as such relief is discretionary); *Rojas-Reyes v. INS*, 235 F.3d 115, 125-26 (2d Cir. 2000) (holding that alien did not have constitutional right to be considered for the discretionary relief of cancellation of removal); *see also Matias v. Sessions*, 871 F.3d 65, 72 (1st Cir. 2017) (holding that, because BIA's exercise of its sua sponte authority was purely discretionary, there could be no due process violation in the denial of such relief); *Assaad v. Ashcroft*, 378 F.3d 471, 475-76 (5th Cir. 2004) (holding that there could be no due process violation from the failure to be considered for discretionary waiver of removability); *Smith v. Ashcroft*, 295 F.3d 425, 429-30 (4th Cir. 2002) ("[T]he discretionary right to suspension of deportation does not give rise to a liberty or property interest protected by the Due Process Clause."); *Oguejiofor v. Attorney General of the United States*, 277 F.3d 1305, 1309 (11th Cir. 2002) ("[A]n alien has no constitutionally protected right to discretionary relief or to be eligible for discretionary relief."); *Ashki v. INS*, 233 F.3d 913, 921 (6th Cir. 2000) ("Ashki has no constitutionally-protected liberty interest in obtaining discretionary relief from deportation."); *Appiah v. INS*, 202 F.3d 704, 709 (4th Cir. 2000) ("Because suspension of deportation is

discretionary, it does not create a protectible liberty or property interest.").

The above principles apply in the context of discretionary relief from detention granted by government officials for aliens subject to final orders of removal. ICE's authority to issue or revoke OSUPs is discretionary. *See, e.g.*, *Jianmei Lin v. Borgen*, No. 25-CV-05618 (MMG), 2025 WL 2158874, at *4 (S.D.N.Y. July 30, 2025) (describing ICE's authority make determinations regarding OSUPs as a "wholly discretionary act"). Indeed, the regulations governing revocation of release establish the discretionary nature of an alien's release from detention. ICE regulations authorize ICE to revoke the release of an alien and return him to custody "in the exercise of discretion," whenever the relevant official determines that there is "any . . . circumstance[]" that "indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2). Such a regulatory scheme does not confer an enforceable entitlement upon any alien to a continuation of their release from detention, except as required to comply with the constitutional limitations set forth in *Zadvydas*—limitations that are not implicated here.[3] In short, an alien who has "been adjudicated removable and ordered deported, and who has nevertheless remained in the country illegally for several years, does not have a liberty or property interest in a discretionary grant" of relief from

[3] The Supreme Court held that aliens subject to final removal orders may be detained for as long as is "reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. The Court concluded that six months was a presumptively reasonable period of time for detention in order to execute a removal order. *Id.* at 701. While it found that this six-month period was presumptively reasonable, the "6-month presumption, of course, does not mean that every alien not removed must be released after six months." *Id.* An alien challenging their post-removal-order detention bears the initial burden of providing "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," after which "the Government must respond with evidence sufficient to rebut that showing." *Id.* But Petitioner has not made this argument, nor could she, as she has been detained for less than two weeks. Petitioner's "due process rights are not jeopardized by [her] continued detention as long as [her] removal remains reasonably foreseeable." *Portillo v. Decker*, No. 21 Civ. 9506 (PAE), 2022 WL 826941, at *6 (S.D.N.Y. Mar. 18, 2022).

removal. *Yuen Jin*, 538 F.3d at 157. An OSUP does not shield an alien who is subject to a final removal order from being removed. As such, Petitioner cannot articulate a protected liberty interest.

Nor does Petitioner's husband's filing of a Form I-730 result in any different outcome. Petitioner is barred by statute from eligibility for such relief. 8 U.S.C. § 1231(a)(5) ("If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, *the alien is not eligible and may not apply for any relief under this chapter*, and the alien shall be removed under the prior order at any time after the reentry.") (emphasis added).[4] In any event, the evaluation of a Form I-730 is a wholly discretionary determination. *See Okpoko v. Heinauer*, 796 F. Supp. 2d 305, 319 (D.R.I. 2011) (rejected due process argument relating to adjudication of I-730 petition based on the agency's "discretion" to make that determination); *Huli v. Way*, 393 F. Supp. 2d 266, 271 (S.D.N.Y. 2005) (holding that "the denial of [Petitioner's] I–730 Petition on the specified grounds falls squarely within the scope of discretion Congress accorded because the statute grants 'sole discretion' to [the Government] to determine 'what evidence is credible and the weight to be given to that evidence' in determinations regarding asylum and derivative asylum. 8 C.F.R. § 204.1(f)(1). Furthermore, [the Government] has discretion to deny derivative asylum status even to eligible applicants."). The Due Process Clause does not attach to purely discretionary relief. *See*

[4] *See also* https://www.uscis.gov/sites/default/files/document/questions-and-answers/FormI-730RefugeeAsyleeFollowing-to-JoinNationalStakeholderEngagementQuestionsandAnswers.pdf at A-17 ("If a beneficiary has re-entered the United States without prior authorization and ICE has already signed and served the Form I-871, the Form I-730 will be denied. See INA 241(a)(5)").

Town of Castle Rock, 545 U.S. at 756 ("Our cases recognize that a benefit is not a protected entitlement if government officials may grant or deny it in their discretion."). When an agency has broad discretion to decide whether or not to confer a benefit, "[t]he existence of that discretion precludes any legitimate claim of entitlement." *Sanitation & Recycling Indus., Inc. v. City of New York*, 107 F.3d 985, 995 (2d Cir. 1997).

Likewise, the pendency of Petitioner's request for a Reasonable Fear Interview does not create a basis to restore her OSUP. The Government has scheduled the RFI for September 22, 2025. Allport Decl. ¶ 27. Nothing more is required. There is nothing uncommon about conducting an RFI while an alien is detained. *See, e.g.*, *Martinez-Garcia v. U.S. Att'y Gen.*, No. 23-11654, 2024 WL 3342466, at *1 (11th Cir. July 9, 2024) ("While [Petitioner] was in custody, DHS conducted a "reasonable fear" interview…); *Palma-Platero v. Sessions*, No. CV 17-1484 (DGC), 2017 WL 3838678, at *1 (D. Ariz. Sept. 1, 2017) ("Petitioner was subsequently detained by ICE and given a reasonable fear interview…").

Finally, to the extent that the relief sought as part of a temporary restraining order and preliminary injunction is a transfer "to the greater New York area where her family lives and her counsel practice," Br. at 20, there are no ICE detention facilities in either the Southern District of New York or the Eastern District of New York that house female ICE detainees. Allport Decl. ¶ 21. Nor is there any need to transfer Petitioner in order to preserve the Court's jurisdiction over this matter. Petitioner's challenge to her detention is a "core" habeas matter that must be filed in the district of confinement and name the immediate custodian as respondent. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1005–06 (Apr. 7, 2025); *Khalil v. Joyce*, 771 F.Supp.3d 268, 278-79 (S.D.N.Y. March 19, 2025). At the time Petitioner filed her petition for writ of habeas corpus, she was

detained within the Southern District of New York, albeit temporarily. Consequently, habeas jurisdiction properly vested in this Court, and Petitioner's subsequent transfer out of the district does not deprive this Court of jurisdiction. *See Khalil*, 2025 WL 849803 at *5 (citing *Ex Parte Endo*, 323 U.S. 283 (1944)). And the Court can rule on his detention claims without her presence in the district.[5]

B. There Is No Statutory or Regulatory Violation Warranting Relief

Petitioner argues that the Government has "no lawful basis for Petitioner's ongoing detention and Petitioner has the right to be returned to the *status quo* conditions of her past Order of Supervision." Br. at 13. Petitioner further asserts that the Government "ignored" the regulations governing Orders of Supervision. Br. at 14.

It is indisputable that the immigration laws authorize ICE to detain aliens subject to final orders of removal. As explained above, 8 U.S.C. § 1231(a) authorizes immigration detention for a period reasonably necessary to accomplish the alien's removal from the United States. *See Zadvydas*, 533 U.S. at 699-700. Following the Supreme Court's decision in *Zadvydas*, ICE promulgated regulations to meet the criteria the Court established to prevent indefinite detention. *See* 8 C.F.R. § 241.4. Under those regulations, a detained alien is entitled to a review of her custody status before her removal period expires, at 180 days, and at annual intervals thereafter, with the right to request interim reviews from headquarters not more than once every three months. *See*

[5] Nor does the Second Circuit's decision in *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025), compel a contrary result. There, the basis for transfer back to the district in which the petition was pending was on account of "an expeditious schedule for a bail hearing and to resolve the constitutional claims made in the habeas petition" along with "Öztürk's interest in participating in her scheduled habeas proceedings in person." *Id.* at 387–88. By contrast, Petitioner's case here does not require her presence at this time.

8 C.F.R. §§ 241.4(k)(1), (k)(2). Of course, in this case Petitioner has not been detained long enough for such a review to have yet occurred.

Moreover, the Government fully complied with its regulations in revoking Petitioner's OSUP. Specifically, 8 C.F.R. § 241.4(*l*)(2) addresses determination to revoke an OSUP. It provides that ICE "shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section. . . . Release may be revoked in the exercise of discretion when, in the opinion of the revoking official: (i) The purposes of release have been served; (ii) The alien violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate."

The documentation revoking the OSUP demonstrates that ICE was in the process of "enforc[ing] a removal order." 8 C.F.R. § 241.4(l)(2). Specifically, the Notice revoking the OSUP provided on September 8, 2025, the same date that Petitioner was detained, stated:

> This decision has been made based on a review of your official alien file and a determination that there are changed circumstances in your case, specifically that ICE has procured a travel document on your behalf and your removal is now imminent. ICE has determined that you can be expeditiously removed from the United States pursuant to the outstanding order of removal against you.

See Return Ex. K. The Notice also explained a change in circumstances in that ICE had obtained documentation of Petitioner's passport that facilitates her removal to Honduras. *Id.*; Allport Decl. ¶ 19. Specifically, the Application for a Stay of Deportation or Removal to ICE filed on July 14, 2025, contains a copy of Petitioner's passport. That provides proof of Petitioner's Honduran citizenship and facilitates her removal to Honduras, which accepts copies of its passport to accept

citizens deported from the United States. Allport Decl. ¶ 19. ICE served the Notice on Petitioner on September 8, 2025. *Id.* ¶ 19; Return Ex. K. After ICE provided Petitioner with the Notice, Petitioner was promptly provided with an informal interview consistent with 8 C.F.R. § 241.4(*l*)(1) at which she noted she would leave her children in the care of her husband and requested a reasonable fear interview. *Id.* ¶ 20. Petitioner was advised that she would be taken into ICE custody, pending her reasonable fear interview. *Id.* Petitioner acknowledged her understanding that she would remain detained pending the reasonable fear interview. *Id.* For all of these reasons, the Petitioner's detention in order to remove Petitioner is consistent with all statutory and regulatory requirements.[6]

C. There Is No Violation of the Administrative Procedures Act

Although the Petition (Count IV) references a claim under the Administrative Procedures Act ("APA"), 5 U.S.C. § 551 et seq., there is no basis for such a claim. ICE's decision to detain Petitioner in order to execute her removal order is one of those "discretionary determinations" that is not a proper basis "for separate rounds of judicial intervention outside the streamlined process that Congress has designed." *AADC*, 525 U.S. at 485. In any event, as a discretionary decision, it is absolutely precluded from review under the APA. *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (noting that there is no APA review of agency action committed to agency discretion by law).

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[6] Where courts have held to the contrary, there has been a demonstrated departure from the requirements of these regulations. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (W.D.N.Y. 2025) (Br. at 10) (finding denial of due process where the government "fail[ed] to provide [petitioner] with the interview required under section 241.4(*l*)(1)"); *Candida Ramirez-Lopez v. Trump., et al.*, 25 Civ. 4826 (JAV), Dkt. 31 at p. 18 ("At the TRO hearing, Respondents could not even confirm whether or not ICE had actually revoked Petitioner's OSUP, let alone what authority ICE had relied upon, who the revoking official was, and whether that official had adhered to ICE's regulations in doing so.").

The Supreme Court recently held that, for an action bringing claims under statutes including the APA that necessarily imply the invalidity of a detainee's confinement, regardless of whether a detainee formally requests release from confinement, such "claims fall within the 'core' of the writ of habeas corpus and *must be brought in habeas*." *Trump v. J.G.G.*, 143 S. Ct. 1003, 1005 (2025) (emphasis added). Here, Petitioner seeks release from custody. This is a core habeas claim—that fails on the merits for the reasons already discussed—and it is not cognizable under the APA. Petitioner's challenge to detention premised on the APA, then, must fail.

D. The Claim Regarding Denial of Right to Counsel Is Moot

The Petition (Claim IV) alleges that while detained at 26 Federal Plaza, the Petitioner was denied the right to counsel. But the declaration submitted by her attorney Livia Santoro demonstrates that she did have access to counsel while at 26 Federal Plaza. Specifically. Ms. Santoro accompanied the Petitioner to 26 Federal Plaza on September 8, 2025 at 7am and stayed until 11am, at which point Petitioner remained n ICE custody. *See* Declaration of Livia Santoro, dated September 11, 2025 ¶¶ 5-12. Ms. Santoro also received a WhatsApp voice message from Petitioner at 6:41pm on September 8. *Id.* ¶ 13. There is no allegation in the declaration of inability to consult with Petition on September 8, 2025, at 26 Federal Plaza, and on the next day, September 9, 2025, Petitioner was transferred out of that facility to the Richwood Correctional Center in Louisiana. In addition to a lack of facts substantiating the allegation regarding access to counsel while at 26 Federal Plaza, the claim is also moot based on Petitioner's transfer to Louisiana. *See Thompson v. Choinski*, 525 F.3d 205, 209 (2d Cir. 2008) (dismissing conditions of confinement claim as moot after inmate was transferred to different facility); *Prins v. Coughlin*, 76 F.3d 504, 506 (2d Cir. 1996) ("It is settled in this Circuit that a transfer from a prison facility moots an action

for injunctive relief against the transferring facility."); *Jabarah v. Garcia*, No. 08 Civ. 3592 (DC), 2010 WL 3834663, at *3 (S.D.N.Y. Sept. 30, 2010) ("When an inmate is transferred from a prison facility, any pending injunctive action against the transferring facility is moot, regardless of whether the action was filed prior to the transfer.").[7]

III. PETITIONER HAS NOT DEMONSTRATED IRREPARABLE HARM

Petitioner has not demonstrated irreparable harm. Her arguments about irreparable harm are essentially the same arguments she has made regarding the Government's alleged non-compliance with statutory and regulatory requirements regarding detention. Petitioner argues, for example, that Respondents "ignored their own regulations governing Orders of Supervision." Br. at 14. That is not correct for the reasons set forth above. Petitioner also attempts to show irreparable harm based on the same alleged constitutional violations addressed in her Due Process argument. She argues, for example, that "Courts grant emergency relief where denial of due process rights occurs." Br. at 14. But there has been no Constitutional violation as demonstrated above. Petitioner has been detained in order to remove her pursuant to a reinstated order of removal. Allport Decl. ¶ 19. But the "burden of removal alone cannot constitute the requisite irreparable injury." *Nken*, 556 U.S. at 435. Accordingly, Petitioner has not established irreparable harm.

[7] To the extent that Petitioner now raises an issue about access to counsel while at the Richwood Correctional Center in Louisiana, *see* Br. 1-2, upon being booked there Petitioner was given two (2) five minute-phone calls for her unrestricted use, and she has 24-hour access to a telephone to contact anyone, including her attorney. *See* Allport Decl. ¶ 24. The Government also expects Petitioner's counsel to attend the Reasonable Fear Interview scheduled for September 22, 2025. *Id.* ¶ 27.

IV. THE PUBLIC INTEREST IS SERVED BY ENFORCING THE IMMIGRATION LAWS

The public interest is served by permitting the Government to carry out the Immigration Laws of the United States, which includes taking the necessary steps to remove individuals who are subject to reinstated orders of removal. "There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and 'permit[s] and prolong[s] a continuing violation of United States law.'" *Nken*, 556 U.S. at 436 (quoting *AADC*, 525 U.S. at 490) (alterations in original). The *Nken* Court was clear that "[i]n considering [the merged final two stay factors], courts must be mindful that the Government's role as the respondent in every removal proceeding does not make the public interest in each individual one negligible." *Nken*, 556 U.S. at 435. On the Petitioner's side of the ledger, the Petitioner has not demonstrated Constitutional, statutory or regulatory violations. Accordingly, the balance of the equities and the public interest support the denial of the relief sought by Petitioner.

V. RELEASE IS NOT WARRANTED

For all the reasons set forth herein, Petitioner is not entitled to any relief in connection with the preliminary requests for relief or in the Petition. To the extent that the Court finds that the Government erred in some manner in processing Petitioner and detaining her on September 8, 2025, the relevant question remains whether Petitioner's detention is valid under 8 U.S.C. § 1231, and if so then releasing Petitioner from detention is not the appropriate remedy. *See U.S. ex rel. Ling Yee Suey v. Spar*, 149 F.2d 881, 883 (2d Cir. 1945) ("But on a writ of habeas corpus we can determine only whether petitioners can be lawfully detained; and if sufficient ground for their detention is shown, they are 'not to be discharged for defects in the original arrest or

commitment.'" (citing *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 158 (1923) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 662 (1892)))). Rather, the remedy in that situation would be to provide the process that may not have occurred. *See, e.g.*, *Rasel v. Barr*, 455 F. Supp. 3d 38, 52 (W.D.N.Y. 2020) (where custody review had procedural errors, ordering that custody review under 8 C.F.R. § 241.4 be provided within 90 days).

CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's petition for writ of habeas corpus, and deny the application for a temporary restraining order and preliminary injunction.

Dated: September 19, 2025
New York, New York

Respectfully submitted,

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 6,929 words.