IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

TOMAS EDUARDO NEVAREZ JURADO,

Petitioner,

v.

JOSEPH FREDEN, in his official capacity as Field Office Director, Buffalo Field Office, U.S. Immigration and Customs Enforcement, et al.,

Respondents.

Civil Action No. 25-CV-00943-LJV

RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

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Respondents have filed a motion to dismiss. The Motion argues that the Petition for a Writ of Habeas Corpus should be dismissed due to 1) the Court lacking jurisdiction under Section 1252(g); 2) Petitioner is not subject to prolonged detention and therefore no claim under *Zadvydas v. Davis* exists, and 3) Petitioner's grant of deferred action and U visa *bona fide* determination are essentially meaningless, and the government is free to take any arbitrary action it wishes with respect to recipients of victim-based immigration benefits. The Motion to Dismiss should be denied as it is without merit. Petitioner responds as follows:

Jurisdictional Arguments under § 1252

The government argues that § 1252(g) bars district courts from reviewing Respondents' decision to detain a noncitizen. DHS Memorandum of Law at Document 10-5, page 2, citing *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016). This argument falls flat on its face, as the result would be that *habeas corpus* would be suspended, in clear violation of the suspension clause, Article I, Section 9, Clause 2 of the U.S. Constitution ("The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."). Indeed, "district courts can—and do—entertain challenges to the procedural processes that the executive branch follows during the removal process." *Velasquez v. Kurzdorfer*, 25-CV-493-LJV, (W.D.N.Y. July 15, 2025) (finding jurisdiction exists because "Mata Velasquez argues that ICE violated the statutory framework as well as constitutional law when it re-detained him. That is a question that falls squarely within this Court's habeas jurisdiction").

Section 1252(b)(9) provides that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove a [noncitizen] from the United States under this subchapter shall be available only in judicial review of a final order." 8 U.S.C. § 1252(b)(9).

And section 1252(g) states that:

> [e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any [noncitizen] arising from the decision or action by [ICE] to commence proceedings, adjudicate cases, or execute removal orders against any [noncitizen] under this chapter.

8 U.S.C. § 1252(g).

This Court has held, however, that sections 1252(b)(9) and (g) do not preclude this Court from exercising jurisdiction over a habeas corpus petition for a noncitizen detainee. *Ceesay v. Kurzdorfer, et. al,* 781 F.Supp.3d 137, 154 (W.D.N.Y. May 2, 2025). The Court acknowledged that Section 1252 effectively strips district courts of jurisdiction to review a final order of deportation (citing *De Ping Wang v. Dep't of Homeland Sec.*, 484 F.3d 615, 615-16 (2d Cir. 2007)) and also bars a district court from reviewing either a direct or an indirect challenge to an order of removal (citing *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). However, in his analysis, Judge Vilardo stated that the district court retains jurisdiction over *habeas corpus* petitions.

The Court, in *Ceesay*, went on to point out that, in *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491 (2001), the Supreme Court explicitly held that "[section] 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention." 533 U.S. at 688. More recently, in *Jennings v. Rodriguez*, the Supreme Court rejected a reading of section 1252(b)(9) that would have limited detained noncitizens to challenging their detentions only through petitions for review of the underlying removal orders in the court of appeals. 583 U.S. 281, 292-95 (2018) (plurality opinion). As Justice Alito explained, writing for a plurality of the Court, while "it [could] be argued that" such a challenge arose from the government's decision to remove the noncitizen "in the sense that if those actions had never been taken, the [noncitizens] would not be in custody at all," such an "expansive interpretation of [section] 1252(b)(9) would lead to staggering results." ***Id.*** at 293. Indeed, "[i]nterpreting 'arising from' in this extreme way would also make claims of prolonged detention effectively unreviewable." *Id.*

The *Ceesay* Court went on to state:

> Moreover, and as the Second Circuit has held, "a suit brought against immigration authorities is not per se a challenge to a removal order; whether the district court has jurisdiction . . . turn[s] on the substance of the relief that a [litigant] is seeking." *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011) (italics omitted). Accordingly, district courts in this circuit have distinguished between challenges to ICE's discretion to execute a removal order, which are barred, and challenges to the manner in which ICE executes the removal order, which are not. See *Torres-Jurado*, 2023 WL 7130898, at *2 (collecting cases); *Ahmed v. Freden*, 744 F. Supp. 3d 259, 264 (W.D.N.Y. 2024) (noting that while "[d]istrict courts do not have jurisdiction over challenges to the legality of final orders of deportation, exclusion, and removal," they retain "jurisdiction to hear immigration-related detention cases").

Ceesay, 781 F.Supp. 3d. at 152.

Indeed, this Court has held that it has authority to review legal challenges to bond determinations. *Onosamba-Ohindo v. Barr*, 483 F. Supp. 3d 159 (W.D.N.Y 2020). In *Onosamba-Ohindo*, this Court held that challenges to the procedures used during § 1226(a) bond hearings are "outside the scope of the jurisdiction-stripping provisions of §§ 1226(e) and 1252(a)(2)(B).

The government did not advance any arguments pertaining to Section 8 U.S.C. § 1252(e)(3), but even if it had, the same arguments regarding the availability of habeas corpus proceedings to challenge government detention of noncitizens apply. § 1252(E)(3) only precludes judicial review of determinations made under § 1225(b) in district courts other than the District Court for the District of Columbia; it does not entirely preclude judicial review of such determinations. "1252(e)(3) narrowly applies only to systemic challenges to regulations implementing expedited removal, not to constitutional or statutory claims which precede and are collateral to that process, including, as relevant here, unlawful arrest or detention." *Velasquez v. Kurzdorfer*, 25-CV-493-LJV, (W.D.N.Y. July 15, 2025) (internal quotation marks omitted)

(holding that "Sections 1252(a)(2)(A) and 1252(e)(3) therefore do not bar this Court from considering [Velasquez's] petition").

Prolonged Detention Under Zadvydas v. Davis

Petitioner is not arguing that he is subject to prolonged detention at this time in violation of *Zadvydas v. Davis,* 533 U.S. 678 (2001).

Detention and Deportation Despite a Grant of Deferred Action and U Visa Bona Fide Determination

The government argues that a grant of deferred action in connection with a U visa application is, essentially, a meaningless thing, and that Respondents reserve the right to detain and deport a U visa applicant with a bona fide determination and a grant of deferred action, with no due process. Respondents argue that "Jurado's belief that this protected him from removal outright or that the government is violating its procedures by removing him is wholly misplaced. As the language in the letter from USCIS makes clear, he was merely a lesser priority, not a non-priority or non-target for removal. See 8 C.F.R. 274a.12(c)(14) (defining deferred action as 'an act of administrative convenience to the government that gives some cases lower priority.'). Thus, the grant of a bona fide finding of entitlement to a U visa is immaterial to this matter."

Congress created the "U" nonimmigrant classification for certain victims of criminal activity with the enactment of the Victims of Trafficking and Violence Protection Act of 2000, Pub.L. 106-386, 114 Stat. 1464 (2000). Under the statute, a non-citizen is entitled to a U visa if the Secretary of the Department of Homeland Security ("DHS") determines that she has suffered "substantial physical or mental abuse" as a result of qualifying criminal activity and can show that she "has been helpful, is being helpful, or is likely to be helpful" to law enforcement authorities that are investigating or prosecuting the crime. 8 U.S.C. § 1101(a)(15)(U)(i).

There exists a well-established "distinction between an alien who has effected an entry into the United States and one who has never entered [that] runs throughout immigration law." *Zadvydas*, 533 U.S. at 693. "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* (collecting cases). Even in *Dept. of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959 (2020), the core point of the Court's analysis in rejecting an as-applied challenge rested on the fact that as an individual who was on the initial threshold of entry, he wasn't entitled to more due process than that afforded by statute. Precedent and logic tell us that those individuals who have established ties in the country are protected by constitutional procedural due process. After all, it is a "well established" rule "that the Fifth Amendment entitles aliens to due process of law." *Trump v. J. G. G.*, 145 S. Ct. 1003, 1006 (2025).

"The fundamental requirement of due process is the opportunity to be heard `at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). "[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors": (1) "the private interest that will be affected by the official action"; (2) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," and (3) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Id.* at 335.

The first *Mathews* factor weighs in Petitioner's favor. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the

liberty [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. A noncitizen's interest in his freedom pending the conclusion of his removal proceedings deserves great "weight and gravity." Courts have held that once released from immigration custody, noncitizens acquire a "protectable liberty interest in remaining out of custody on bond." *See Lopez-Arevelo v. Ripa*, P-25-CV-337-KC, W.D.T.X., September 22, 2025, citing *Diaz v. Kaiser*, No. 25-cv-5071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025) (collecting cases); accord *M.S.L.*, 2025 WL 2430267, at *8 ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.") (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025) (same). "Because he spent nearly three years at liberty in the United States, Lopez-Arevelo possesses a cognizable interest in his freedom from detention." *Lopez-Arevelo.*

Petitioner has resided in the United States for many years, and indeed has been here since 2004 – over two decades. He has his wife, mother, and children all residing in the United States and with lawful status here.

Under the second Mathews factor, the Court must consider "whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." The government, having provided a grant of "deferred action" which Nevarez relied upon – in fact, he was granted work authorization and he started his own trucking business, and was delivering military cargo to Fort Drum at the time he was detained by ICE – has just arbitrarily decided that it unilaterally no longer wishes to hold up its end of the bargain, and has detained him with no prior notice nor opportunity to be heard. The government's interest in pursuing deportation of noncitizens

without lawful status here does not outweigh Nevarez's private right to continue relying on a promise made by the government – that if he assisting law enforcement with the investigation and prosecution of a serious crime – he would be protected from harm.

The third Mathews factor necessitates the imposition of procedural safeguards to protect those in Petitioner's position – reliant on a government grant of deferred action which promised to protect them from arbitrary enforcement, yet now faced with an administration that places no value in continuity or compliance with past promises. The government's reliance on the wording that "deferred action" simply reduces the priority, ignores the reality that a reduction in priority specifically meant, for many years, that immigration enforcement would not take place against U visa recipients. The wording was not meaningless – the government actively advertised that deprioritization of removal of certain categories of noncitizens was a promise and induced those noncitizens into pursuing victim-based benefit programs, only to now pull the rug from under them.

Even if ICE has the right to deport Mr. Nevarez despite his deferred action and U-visa *bona fide* determination, this Court has held that the right to be free from arbitrary detention is something separate and distinct from the government's ability to exercise discretion. "[the] government's argument, however, confuses Ceesay's right to an order of supervision, which ICE indeed has discretion to grant or deny, with his right not to be detained without adequate—in fact, without any—process. The right to be free from detention can never be dismissed as discretionary." *Ceesay v. Kurzdorfer, et. al,* 781 F.Supp.3d 137, 154 (W.D.N.Y. May 2, 2025). In *Ceesay*, this Court held that "even if ICE regulations did not give him the right to an informal interview, he still would be released" because of his fundamental right to due process.

As in *Ceesay*, the Petitioner here was operating under the assumption that he was doing things the right way – he had a pending victim-based immigration benefit application that was issued a *bona fide* determination, and a grant of deferred action, making him eligible for an employment authorization document. Based on that, he qualified for and received a Commercial Driver's License and became an owner operator of a tractor-trailer. He became a long-haul trucker, delivering critical cargo to military bases across the country. When he did encounter Border Patrol in Arizona a few months ago, they looked over his paperwork and sent him on his way – he had a grant of deferred action, after all. The government basically told Nevarez that he was allowed to be here – he followed the law, reported a crime, assisting law enforcement, and relied on the ensuing protection afforded him under those laws and regulations. Then, all of the sudden, in the midst of the administration's push to detain and deport – at the gates of Fort Drum while delivering cargo – he was snatched up with no due process, detained, and held at BFDF. The government is ready to deport him to Mexico, reneging on promises it made to him over the course of years. He would leave behind his entire family – wife, mother, and children – many of whom have lawful status here in the U.S. This isn't due process – it is a government that is acting lawlessly and ruthlessly in pursuit of a singular agenda.

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/s/ Matthew K. Borowski

Matthew K. Borowski
Attorney for Petitioner
4343 Union Road,
Buffalo NY 14225
E-mail: matthew@borowskilaw.com
Tel: 716-330-1503